



**Order under Section 69  
Residential Tenancies Act, 2006**

**Citation:** Cityhousing Hamilton Corporation v Jones, 2023 ONLTB 29150

**Date:** 2023-04-03

**File Number:** LTB-L-067091-22

**In the matter of:** 317, 226 REBECCA ST  
HAMILTON ON L8R1C3

**Between:** Cityhousing Hamilton Corporation Landlord

**And**

Aaron Jones Tenant

Cityhousing Hamilton Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Aaron Jones (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on March 15, 2023. Only the Landlord's legal representative, K. Howlett, attended the hearing. As of 2:02 p.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence. The Landlord's witnesses, K. Beriault (KB), C. Lawrence (CL) and R. Fanjoy (RF) also attended the hearing.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy is terminated on April 14, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.

**N5 Notices**

3. On September 12, 2022, the Landlord gave the Tenant a first, voidable N5 notice of termination. In sum, the notice of termination alleges that the Tenant made excessive noise and ran water off his balcony onto the balcony below.
4. CL testified to the events listed in the N5 Notice. He resides in the unit below the Tenant. He testified that on several occasions, the Tenant dragged furniture late at night which disturbed his sleep. In addition, the Tenant threw water on his balcony which would runoff onto CL's balcony. CL testified that these incidents substantially interfered with his enjoyment of the residential complex.
5. KB also testified to the events listed in the N5. She is the property manager. She received at least 4 complaints a week regarding the Tenant's conduct.
6. Subsection 64 (1) of the Act states:

A Landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the Landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the Landlord or another tenant. 2006, c. 17, s. 64 (1).

7. Based on the uncontested evidence of the Landlords, I find that the Tenant substantially interfered with CL's reasonable enjoyment. As such, I find that the first N5 notice is valid.
8. On November 9, 2022, the Landlords gave the Tenant a second N5 notice of termination. In sum, the notice of termination alleges that the Tenant made excessive noise and ran water off his balcony onto the balcony below again.
9. CL testified to these events and stated that the noise impacted his ability to sleep, and water from the Tenant's balcony spilled onto his balcony
10. Subsection 68(1) of the Act states that:

A Landlord may give a tenant notice of termination of the tenancy if,

- (a) a notice of termination was given to the tenant under section 62, 64 or 67; and
- (b) more than seven days but less than six months after the notice mentioned in clause (a) was given to the tenant, an activity takes place, conduct occurs or a situation arises that constitutes grounds for a notice of termination under section 60, 61, 62, 64 or 67, other than an activity, conduct or a situation that is described in subsection 61 (1) and that involves an illegal act, trade, business or occupation described in clause 61 (2) (a). 2006, c. 17, s. 68 (1); 2017, c. 13, s. 12.

11. This section entitles the Landlord to serve a non-voidable N5 if there is another incident that occurs more than seven days but less than six months after the Landlord served the first N5 notice.
12. I accept the uncontested testimony of CL, and find that the Landlord proved, on a balance of probabilities, that the Tenant substantially interfered with another tenant's reasonable enjoyment of the residential complex by making excessive noise late at night and throwing water onto CL's balcony. **Daily compensation**
13. The Tenant is required to pay the Landlord \$2,126.16 in daily compensation for use and occupation of the rental unit for the period from December 2, 2022 to March 15, 2023.
14. Based on the Monthly rent, the daily compensation is \$24.72. This amount is calculated as follows: \$752.00 x 12, divided by 365 days.
15. The Landlord submitted that the Tenant paid the Landlord \$420.00 since December 1, 2022.

**Relief from eviction**

16. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
17. The Landlord submitted that the tenancy cannot continue. RF resides three units away from the Tenant. He testified that there is excessive noise coming from the Tenant's unit. The noise includes door slamming and yelling at all hours of the night. KB also testified that an inspection of the unit revealed extensive damage, the Tenant overflowed his bathtub and caused damage to the unit below and in January 2023, the Tenant, a guest or occupant set off a road flare in the kitchen of the rental unit.
18. In consideration of the foregoing, and the fact that the Tenant did not attend the hearing to disclose any circumstances to consider relief from eviction, relief will not be granted.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before April 14, 2023.
2. If the unit is not vacated on or before April 14, 2023, then starting April 15, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after April 15, 2023.

4. The Tenant shall pay to the Landlord \$2,126.16, which represents compensation for the use of the unit from December 2, 2022 to March 15, 2023, less the amount paid by the Tenant, rent deposit and interest the Landlord owes on the rent deposit.
5. The Tenant shall also pay the Landlord compensation of \$24.72 per day for the use of the unit starting March 16, 2023 until the date the Tenant moves out of the unit.

**April 3, 2023**

**Date Issued**

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Camille Tancioco

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,  
Toronto ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on October 15, 2023 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.