



**Order under Section 69 / 88.1 / 89  
Residential Tenancies Act, 2006**

**Citation:** Stante v Doobay, 2023 ONLTB 28438

**Date:** 2023-03-31

**File Number:** LTB-L-073910-22

**In the matter of:** Front Apartment, 12940 Yonge Street RICHMOND  
HILL ON L4E3K2

**Between:** Carmine Stante Landlords  
Maria Stante

**And**

Gavin Doobay Tenant

Carmine Stante and Maria Stante (the 'Landlords') applied for an order to terminate the tenancy and evict Gavin Doobay (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 Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises.

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

The Landlords also applied for an order requiring the Tenant to pay the Landlords' reasonable out-of-pocket costs the Landlords have incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

The Landlords also applied for an order requiring the Tenant to pay the Landlords' reasonable out-of-pocket expenses that are the result of the Tenant's conduct or that of another occupant of the rental unit or someone the Tenant permitted in the residential complex. This conduct

substantially interfered with the Landlords' reasonable enjoyment of the residential complex or another lawful right, privilege or interest.

This application was heard by videoconference on March 15, 2023. The Landlords and the Landlords' legal representative, P. Swales, attended the hearing. The Landlords also had the following witnesses attend the hearing: M. Bowman (MB), W. McCrea (WM), and A. Beaton (AB).

As of 10:24 a.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 Landlords' evidence.

**Determinations:**

1. As explained below, the Landlords have 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 as of April 11, 2023 and the Tenant shall pay to the Landlords compensation for damages.
2. The Tenant was in possession of the rental unit on the date the application was filed.

**N5 Notices**

3. On October 29, 2022, the Landlords gave the Tenant a first, voidable N5 notice of termination. In sum, the notice of termination alleges that the Tenant made excessive noise to disturb the other tenant, MB, and uttered threats towards him.
4. MB testified to the events listed in the N5 Notice. He testified that he resided in the unit below the Tenant. The noise was stomping and yelling which occurred late at night and disturbed his sleep. MB stated that the Tenant lunged at him, threatened harm and to break his windows, and uttered racial slurs. MB testified that these incidents substantially interfered with his enjoyment of the residential complex.
5. 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).

6. Based on the uncontested evidence of the Landlords, I find that the Tenant substantially interfered with MB's reasonable enjoyment. As such, I find that the first N5 notice is valid.

7. On December 1, 2022, the Landlords gave the Tenant a second N5 notice of termination. In sum, the notice of termination alleges that the Tenant threatened MB with physical violence and uttered racist slurs towards him.
8. MB testified to these events, and stated he was so disturbed that he vacated the rental unit shortly after.
9. 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.
10. This section entitles the Landlords to serve a non-voidable N5 if there is another incident that occurs more than seven days but less than six months after the Landlords served the first N5 notice.
  11. I accept the uncontested testimony of MB, and find that the Landlords proved, on a balance of probabilities, that the Tenant substantially interfered with another tenant's reasonable enjoyment of the residential complex by threatening MB with physical violence and uttering racist slurs towards him

### **Compensation for damages**

12. The Tenant, another occupant of the rental unit or a person whom the Tenant permitted in the residential complex wilfully or negligently caused undue damage to the rental unit or residential complex.
13. AB testified that she is the property manager of the residential complex. She testified that the Tenant damaged the walls, entry door, entry railing and entry porch. Submitted into evidence were pictures of same.
14. Based on the uncontested evidence of the Landlords, I find that the Tenant wilfully or negligently caused undue damage to the residential complex. The pictures show damage so substantial that it could not be said to be from reasonable wear and tear.
15. I also find that the costs for repair and replacement are reasonable. Submitted into evidence were quotes in the amount of \$22,636.60. The Landlords are therefore entitled to the amount plead in the application.

### Compensation for substantial interference

16. The Landlords have not proven that they incurred or will incur reasonable out-of-pocket expenses for compensation for substantial interference. The Landlords submitted that they are entitled to costs for lost revenue due to tenants vacating the unit as a result of the Tenant's disturbing conduct. Submitted into evidence was a ledger for lost revenue.

17. Section 88.1 of the Act states:

(1) A Landlord may apply to the Board for an order requiring a tenant or former tenant to pay costs described in subsection (4) if,

(a) while the tenant or former tenant is or was in possession of the rental unit, the conduct of the tenant or former tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant or former tenant is or was such that it substantially interferes or interfered with,

- (i) the reasonable enjoyment of the residential complex for all usual purposes by the Landlord, or
- (ii) another lawful right, privilege or interest of the Landlord; and

(4) The costs referred to in subsection (1) are **reasonable out-of-pocket expenses** that the Landlord has incurred or will incur as a result of an interference described in clause (1) (a) and do not include costs that the Landlord may recover in an application under section 88.2 or 89. [emphasis added].

18. As can be seen from the wording of section 88.1(4) above, the compensation for substantial interference must be reasonable out-of-pocket expenses. While out-of-pocket is not defined in the Act, Black's law dictionary, fifth edition, defines "out-of-pocket" as a direct expense which requires the immediate outlay of cash in contrast to an accrued expense. I do not find that lost revenue meets the definition of out-of-pocket. As such, the Landlords' claim for compensation is denied.

### Relief from eviction

19. 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.

20. WM testified that he has resided in the residential complex since 1995. The Tenant's conduct has also disturbed him. In consideration of the foregoing, and the fact that the Tenant did not attend the hearing to disclose any circumstances to consider delaying or denying eviction, relief shall not be granted.

**It is ordered that:**

1. The tenancy between the Landlords and the Tenant is terminated. The Tenant must move out of the rental unit on or before April 11, 2023.
2. If the unit is not vacated on or before April 11, 2023, then starting April 12, 2023, the Landlords 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 Landlords on or after April 12, 2023.
4. The Tenant shall pay to the Landlords \$6,820.90, which represents the reasonable costs of repairing the damage and / or replacing the damaged property.
5. The Tenant shall also pay to the Landlords \$186.00 for the cost of filing the application.
6. If the Tenant does not pay the Landlords the full amount owing on or before April 11, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 12, 2023 at 5.00% annually on the balance outstanding.

**March 31, 2023** \_\_\_\_\_ **Date Issued**  
Camille Tancioco

Member, Landlords 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 12, 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.

