



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

**Citation:** Hattie v Heyink, 2023 ONLTB 26108

**Date:** 2023-03-21

**File Number:** LTB-L-039594-22

**In the matter of:** 2, 15661 Hwy 35  
Algonquin Highlands ON K0M1J2

**Between:** Carolyn Johnson Landlord  
Deborah Hattie

**And**

Dwayne Heyink Tenant

Carolyn Johnson and Deborah Hattie (the 'Landlord') applied for an order to terminate the tenancy and evict Dwayne Heyink (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 in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

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 9, 2023.

The Landlord and the Tenant attended the hearing.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the Landlord's application for eviction is granted. Based on all the circumstances, it's reasonable to postpone eviction to April 30, 2023.

## N5 Notice of Termination

### Substantial interference

2. On June 30, 2022, the Landlord gave the Tenant an N5 notice of termination ending the tenancy on July 29, 2022. The Tenant doesn't dispute that he failed to remove his motor boat and trailer, ice fishing hut on the sled and white commercial cub van between July 1, 2022 to July 7, 2022. The Tenant did not void the N5 notice of termination in accordance

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with s.64(3) of the *Residential Tenancies Act, 2006* (Act). The Tenant stopped the conduct or activity or corrected the omission after seven days from the date he received the N5 notice of termination when has removed the ice hut and sled on July 12, 2022, the commercial van on July 15, 2022 and the boat and trailer on October 2022. I do not find it reasonable to terminate the tenancy when the Tenant stopped storing his vehicles on the property and the interference caused to the Landlord has stopped.

## N12 Notice of Termination

### Landlord's Own Use

On July 28, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of September 30, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by Deborah Hattie.

3. The Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year.
4. The Landlord has filed a declaration that affirms she personally requires the rental unit for personal occupation as required under section 72(1) of the *Residential Tenancies Act, 2006* (the 'Act').
5. On September 30, 2022, the Landlord has compensated the Tenant an amount equal to one month's rent by September 30, 2022.
6. The Landlord collected a rent deposit of \$700.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$48.29 is owing to the Tenant for the period from July 5, 2018 to March 9, 2023.
7. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

Relief from Eviction:

- 8. 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 not be unfair to postpone the eviction until April 30, 2023 pursuant to subsection 83(1)(b) of the Act.
- 9. The Tenant is not contesting the Landlord good faith intention to occupy the rental unit. The Tenant seeks more time to find alternate accommodation in the area stating that it's been difficult for him since he's not computer savvy and relies on word of mouth or units advertised in the paper. The Landlord was opposed to extending the termination date but I find it reasonable since the Landlord may take up to one to two months to obtain materials to do minor renovations before she moves in.

**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 30, 2023.

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- 2. If the unit is not vacated on or before April 30, 2023, then starting May 1, 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 May 1, 2023.
- 4. The Landlord shall apply the last month rent deposit to the Tenant's April 2023 rent period which is the last month of the tenancy. The amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the amount the Landlord is entitled to by \$(27.14).
- 5. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

**March 21, 2023**

**Date Issued**

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Sandra Macchione

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.