



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

**Citation:** Huffman v Leaman, 2023 ONLTB 18838

**Date:** 2023-02-16

**File Number:** LTB-L-012288-22

**In the matter of:** 2 - ROOM A, 177 MARY ST HAMILTON  
ON L8L4V9

**Between:** Lois Huffman Landlord

**And**

Geoffery Leaman Tenant

Lois Huffman (the 'Landlord') applied for an order to terminate the tenancy and evict Geoffery Leaman (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes. This is the L1 Application.

The Landlord also applied for an order to terminate the tenancy and evict 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 and 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 Landlord also applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket costs the Landlord has 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. This is the L2 Application.

This application was heard by videoconference on January 11, 2023.

The Landlord, and the Landlord's Legal Representative, Jordan Nieuwhof, attended the hearing.

As of 11:11 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 Landlord's evidence.

**Determinations:**

**L1 Application**

1. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent ('N4 Notice'). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$400.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$13.15. This amount is calculated as follows: \$400.00 x 12, divided by 365 days.
5. The Tenant has paid \$400.00 to the Landlord since the application was filed.
6. The rent arrears owing to January 31, 2023 are \$7,750.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.
9. The Landlord testified that she is unaware of any circumstances of the Tenant that would cause the termination of the tenancy to be delayed or denied. The Tenant did not attend the hearing to give evidence of their circumstances.
10. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

**L2 Application**

11. As explained below, the Landlord proven on a balance of probabilities the grounds for termination of the tenancy therefore, the tenancy is terminated on February 20, 2023.
12. On January 13, 2021, the Landlord gave the Tenant an N5 notice of termination ('N5 Notice'). The N5 Notice contains the following allegations:

- The Tenant left scrap metal in a designated fire route section resulting in fine of \$497.00
- The Tenant has damaged the stair and door into the unit and failed to repair same. Tenant spilled paint on the floor of fire exit (interior & exterior)
- The Tenant broke into Landlords unit and stole tools, money, car keys. Tenant unlawfully drove vehicle and damaged the hood, drivers side mirror and front window
- The Tenant has hoarded miscellaneous waste at front and rear of property. Notice of By-Law compliance orders were distributed to Tenant who failed to bring the property into compliance by November 3, 2021. Waste remains and the Tenant has failed to remit the associated fines of \$726.32.

### Substantial Interference

13. The “substantial interference” ground for termination is established by section 64 of the Act. Section 64(3), states that an N5 is void if the tenant, within seven days after receiving the notice, stops the offensive conduct. In the present situation, the voiding period ran from January 14 to 20, 2021.
14. The Landlord’s Legal Representative submitted the Tenant did not paid the associated fines, in the amount of \$726.32, within seven days of receiving the N5 Notice.
15. The Landlord offered testimony that the Tenant refused to comply with the order and the City of Hamilton sent a contractor to the rental property to complete the work. She stated that she has paid the required fines in the amount of \$726.32 and has received no compensation from the Tenant. As such, I am satisfied that the Tenant did not void the N5 Notice.
16. The Landlord’s Legal Representative submitted three documents from the City of Hamilton which show the Landlord has been ordered to pay administrative fines to the city for noncompliance with an order to clear the property of debris and garbage in the amounts of \$155.00, \$342.00, and \$229.32.
17. Being fined by the municipality for the Tenant’s violation a municipal by-law is a substantial interference of the Landlord’s legal interest in the residential complex. I find that the Landlord had to pay fines for the Tenant’s failure to clear the areas of garbage and debris, which is a violation of the municipal by-laws governing the rental unit. As such, based on the uncontested evidence before me, I am satisfied, on a balance of probabilities, that the

Tenant has substantially interfered with the Landlord's legal interest in the residential complex.

Wilful and/or Negligent Damage

18. The allegations in the N5 Notice include blocking a designated fire route, damage in the rental unit, theft of the Landlord's belongings, and hoarding of waste outside of the rental unit. The N5 Notice and the L2 application also claim compensation for the repair and/or replacement of the damaged property in the amount of \$726.32 however, based on the Landlord's testimony, this amount represents the total fines paid by the Landlord not for damages as claimed in the L2 application. The Landlord did not request to amend their application for compensation for out-of-pocket expenses so, as a result, the claim for \$726.32 is denied as the Board does not have the jurisdiction to award such claims that are not properly before the Board.

**It is ordered that:**

**L1 Application**

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
  - \$8,336.00 if the payment is made on or before February 27, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after February 27, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
4. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before February 27, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$7,680.65. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$13.15 per day for the use of the unit starting January 12, 2023 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlord the full amount owing on or before February 27, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 28, 2023 at 5.00% annually on the balance outstanding.

8. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
9. If the unit is not vacated on or before February 27, 2023, then starting February 28, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. 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 February 28, 2023.

## **L2 Application**

11. Regardless of whether or not the Tenant voids the order above with respect to non-payment of rent under paragraph 2 or 3 of this order, the tenancy between the Landlord and the Tenant is terminated effective February 27, 2023.
12. The Tenant must move out of the rental unit on or before February 27, 2023.
13. If the unit is not vacated on or before February 27, 2023, then starting February 28, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
14. 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 February 28, 2023.

**February 16, 2023**

**Date Issued**

Susan Priest

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 expires on August 21, 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.

\*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

## Schedule 1 SUMMARY OF CALCULATIONS

**A. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before February 20, 2023**

Rent Owing to February 28, 2023	\$8,550.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$400.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$8,336.00</b>

**B. Amount the Tenant must pay if the tenancy is terminated**

Rent Owing to Hearing Date	\$7,894.65
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$400.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$7,680.65</b>
Plus daily compensation owing for each day of occupation starting January 12, 2023	\$13.15 (per day)