



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

**Citation:** Harper v Hamilton, 2023 ONLTB 20137

**Date:** 2023-02-09

**File Number:** LTB-L-015219-22

**In the matter of:** 2, 70 QUEENSTON STREET  
ST.CATHARINES ON L2R2Z2

**Between:** Robert Harper Landlord

**And**

Kenneth Hamilton and Tabitha Froom Tenant

Robert Harper (the 'Landlord') applied for an order to terminate the tenancy and evict Kenneth Hamilton and Tabitha Froom (the 'Tenants') because:

- The Tenants, 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 Landlords 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 January 25, 2023.

Only David Bashker for the Landlord, and the Landlord's Legal Representative, Jennifer Ricci, attended the hearing.

As of 10:29 a.m., the Tenants were 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:**

1. For the reasons that follow, I find the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex have substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlords or another tenant.
2. The application is based on two Notices of Termination that the Landlord served upon the Tenants. The Landlord served the first N5 on December 1, 2021 (the "1<sup>st</sup> N5") and the Landlord served the second N5 on March 9, 2020 (the "2<sup>nd</sup> N5"). The termination date on the notices, respectively, is December 22, 2021 and March 15, 2022. The 1<sup>st</sup> N5 alleges that on December 1, 2021, there was garbage and junk in the front yard and at the front

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door; it sets out the necessary steps to void the notice of eviction. The 2<sup>nd</sup> N5 alleges on February 24, 2022, the rental unit was dirty with furniture, clothes and garbage all over, and the yard was full of junk; the conditions had not changed when the an agent of the Landlord reinspected on February 28, 2022.

3. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
4. The Landlord collected a rent deposit of \$1,000.00 from the Tenants and this deposit is still being held by the Landlord. 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.

#### Landlord's evidence and testimony

5. David Bashker (DS), the superintendent, testified on behalf of the Landlord as to the details set out in the 1<sup>st</sup> and 2<sup>nd</sup> N5 notices. DS pointed to pictures #1 and #2 that set out the state of the yard and in front of the unit door on December 1, 2021, when the 1<sup>st</sup> N5 was served, and #3 through #26 that establish the state of the unit on February 24 and 28, 2022, with respect to the 2<sup>nd</sup> N5.
6. The following were also entered into evidence: By-Law Enforcement Order to Comply from the City of St. Catherines, dated August 17, 2022; Past Due Notice for failure to pay the \$250.00 fine associated with failing to keep the land clear of waste from October 19, 2022; video taken by the superintendent on, August 20, 2022 showing the debris and scrap in the yard; and a video taken October 24, 2022 showing the yard in a similar condition.
7. The Landlord's Legal Representative submitted that as soon as the Landlord has the property cleared/cleaned, the Tenants fill it back up again, if it had not been for the Landlord's efforts, the state would be even worse than it is. Other Tenants have vacated because of these Tenants; there has been no improvement, and the Landlord will continue to get fines. The City is in constant contact with the Landlord about the state of the property, and the superintendent has talked to the Tenants on a regular basis to no avail, eviction is the only solution.

#### Analysis

8. Section 64 of the *Residential Tenancies Act, 2006* (the 'Act') states:

(1) 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.

(3) The notice of termination under subsection (1) is void if the tenant, within seven days after receiving the notice, stops the conduct or activity or corrects the omission.

9. Section 68 of the Act states that if an N5 becomes void pursuant to section 64(3), the landlord may serve a 2<sup>nd</sup> N5 if, within six months after the 1<sup>st</sup> N5 was given, conduct occurs or a situation arises that constitutes a substantial interference in section 64.
10. Here the uncontested testimony and evidence establishes that the incidents in the first N5 occurred, and that this behaviour was corrected as no further incidents occurred or were complained of within the 7-day voiding period; pictures #3 and #4 dated February 24 and 28, 2022, set out the next complaints.
11. The uncontested testimony and evidence establish that the Tenants' behaviour has not changed since receiving the 2<sup>nd</sup> N5; the rental complex is still in such a state as to warrant intervention from the City.
12. Therefore, based on all of the above, I find that Tenants have substantially interfered with the reasonable enjoyment of other tenant and has substantially interfered with 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.

#### Relief from Eviction

13. 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. The Tenants did not attend the hearing to offer any other considerations, and there has been no change to their behaviour or any apparent attempt to bring the property to a state that will not require continual contact from the City.
14. This order contains all the reasons for the decision within it. No further reasons shall be issued.

#### **It is ordered that:**

1. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before February 20, 2023.
2. If the unit is not vacated on or before February 20, 2023, then starting February 21, 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 February 21, 2023.
4. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application on or before February 20, 2023. If the Tenants do not pay this amount by the required date, the Tenants will start to owe interest from February 21, 2023. This will be simple interest calculated at 5% annually on the balance outstanding.

**February 9, 2023**  
**Date Issued**

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 Diane Wade  
 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 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.