



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

**Citation:** Mero Construction Limited v Fournel, 2023 ONLTB 18853

**Date:** 2023-02-09

**File Number:** LTB-L-033368-22

**In the matter of:** 408, 91 WELLESLEY ST E  
TORONTO ON M4Y1H9

**Between:** Mero Construction Limited Landlord

### **And**

Gerald Fournel Tenant

Mero Construction Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Gerald Fournel (the 'Tenant') because

- the Tenant did not pay the rent that the Tenant owes; and
- 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 February 1, 2023.

The Landlord's Representative, Patty Duwyn attended the hearing. Witnesses for the Landlord included: J. Mills and Patrick Targett. The Landlord chose not to call other witnesses who attended.

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:**

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 \$1,908.61. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$62.75. This amount is calculated as follows: \$1,908.61 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to February 28, 2023 are \$24,299.39.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$1,747.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
9. Interest on the rent deposit, in the amount of \$94.67 is owing to the Tenant for the period from January 1, 2019 to February 1, 2023.

L2 Application:

10. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, a conditional order is issued.

N5 Notice of Termination

Substantial interference

11. On May 31, 2022, the Landlord gave the Tenant an N5 notice of termination ending the tenancy on June 20, 2022. The notice of termination contains the following allegations: The Tenant causes a noise disturbance from stomping December 9, 13, 18, 19, 2021; January 11, 12, 13, 14, 15, 16, 17, 20, 21, 24, 25, 30, 2022; February 11, 12, 16, 18, 23, 24, 25, 27, 28, 2022; March 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14 to 31, 2022; April 5, 7, 8, 12, 16, 19, 20, 21, 22, 23, 24 to 30, 2022; and May 3 to 19, 2022. On some of these dates the Tenant was also heard yelling.
12. The Tenant did not stop the conduct or activity or corrected the omission within seven days after receiving the N5 notice of termination. JM, the tenant living below the Tenant's unit testified he heard stomping noise from his unit emanating from the Tenant's unit on June 1, 2022 at 2:33 p.m., 2:35 p.m., 2:37 p.m. and 7:22 p.m.; June 5, 2022 at 9:20 p.m., June 6, 2022 at 3:46 pm and 9:02 p.m. and June 7, 2022 at 12:21 p.m. Therefore, the Tenant

has not voided the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).

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 not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.
14. The Tenant was unresponsive to the Landlord's letters to contact them about a payment plan. The noise disturbances are for the most part during the day, afternoon and early evening and the length of the disturbance is short. I acknowledge some of the stomping wakes up tenant from sleep, as such a conditional order is reasonable if the Tenant voids the L1 portion of this order.

**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:**
  - \$24,485.39 if the payment is made on or before February 20, 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 20, 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 20, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$20,797.86. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$62.75 per day for the use of the unit starting February 2, 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 20, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 21, 2023 at 5.00% annually on the balance outstanding.

8. 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.
9. 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.

**L2 Application:**

10. If the Tenant voids the L1 application, then for twelve months, the Tenant shall not cause noise disturbance that substantially interferes with other tenants' reasonable enjoyment of the rental unit.
11. If the Tenant fails to comply with paragraph 10 of this order *and* the Landlord receives a written complaint with sufficient detail of noise disturbance that reaches the level of substantial, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006*, without notice to the Tenant for an order terminating the tenancy and evicting the Tenant. The Landlord must make this application no later than 30 days after receiving the complaint about the Tenant's behaviour

**February 9, 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.

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.

**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	\$24,299.39
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	- \$0.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$24,485.39</b>

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

Rent Owing To Hearing Date	\$22,453.53
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	- \$0.00
<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	- \$1,747.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$94.67
<b>Less</b> the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$20,797.86</b>
Plus daily compensation owing for each day of occupation starting February 2, 2023	\$62.75 (per day)