



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

Citation: Myher v Solomon, 2022 ONLTB 14108

Date: 2022-12-13

File Number: LTB-L-069524-22
(NOL-42199-21)

In the matter of: 1, 340 Queen Street
Sudbury Ontario P3B2K4

Between: Ross Myher Landlord

And

Justin Leo Solomon Tenants
Trista Whiskeychan

Your file has been moved to the Landlord and Tenant Board's new case management system, the Tribunals Ontario Portal. Your new file number is LTB-L-069524-22

Ross Myher (the 'Landlord') applied for an order to terminate the tenancy and evict Justin Leo Solomon and Trista Whiskeychan (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 Landlord or another tenant.

The Landlord also applied for an order to terminate the tenancy and evict the Tenants because they, another occupant of the rental unit or a person the Tenants permitted in the residential complex have seriously impaired the safety of any person and because the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlords.

This application was heard by videoconference on December 6, 2022.

Only the Landlord's legal representative Monique Laderoute and the Landlord attended the hearing.

As of 1:26 p.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. This application had been previously adjourned on July 20, 2021 so that the legal counsel at the legal aid clinic would have time to review the file and prepare for the hearing. This application had only recently been retained by the Legal Aid clinic and they requested an adjournment in order to obtain the file and prepare.
2. At the hearing today, the Landlord advised that the Tenant's Legal representative had advised them on November 22, 2022 that they were no longer representing the Tenants. I reviewed the email and confirmed that the legal representative had not advised the LTB of this contrary to the Board's Rules of Procedure, Rule A9.3.
3. The Board confirmed that the Notice of Hearing had been sent out via email to the Tenant's Representative and the Tenants on November 16, 2022, and by mail on November 17, 2022.
4. The Landlord's representative confirmed that they had also provided a copy of the Notice of Hearing for this hearing to the Tenants.
5. As such I was satisfied that the Tenants were aware of the hearing, had been given notice of the hearing and that there was no request to reschedule the hearing. The hearing proceeded in the absence of the Tenants.
6. The Landlord served an N5 notice of termination on the Tenants on February 10, 2021. The Landlord confirmed that the voiding period for the N5 was from 11-18 February 2021.
7. The Landlord confirmed that the Tenants had voided the N5 and that a second N5 had not been served.
8. The Landlord served an N7 notice of termination on the Tenants on February 10, 2021.
9. The allegations in the N7 were duplicative of the allegations contained in the N5. More precisely, the Landlord confirmed that there were no allegations in the N7 notice that were not voided by the N5 notice. Had there been, the Board would have proceeded on those allegations only.
10. The Landlord served a voidable notice and a non-voidable notice on the Tenants for essentially the same conduct. By serving both types of notices, this has left the perception of confusion as to how to respond to the allegations, or to know if they can void notices by changing their behaviour.
11. An N-7 notice process is reserved for requests for eviction under serious cases like a breach of s. 66 (1) (a) of the Act. That subsection allows for the eviction of a tenant whose conduct "seriously impairs or has seriously impaired the safety of any person." The notice period is short and the statute does not allow for a cure period. Case law has reserved resort to s. 66 of the Act and the N-7 process therefore to cases involving "weighty, grave, or momentous conduct" involving the actual impairment of safety or *a real risk* of impairment of safety. (*2276761 Ontario Inc. v. Overall*, 2018 ONSC 3264). Because of this the Board will customarily schedule an application on an expedited basis.

12. The Landlord made the choice to serve two different notices, voidable and non-voidable and created this confusion. I was not satisfied that there was no confusion created. It is not appropriate for the Landlord to serve both types of notices for the same alleged conduct and hope to succeed on one or the other. The Landlord must have had concern about the N7 and therefore also served the N5, suggesting that this conduct was not actually as “weighty, grave or momentous” as needed to prove on a balance of probabilities.
13. Therefore, given that the N5 has been voided, and the application cannot proceed on the N7, the Landlord’s application must be dismissed.
14. The Landlords made submissions for costs as a result of the delay caused by the adjournment on July 20, 2022.
15. The adjournment had been granted so that the Tenants legal counsel could review the application and prepare for the hearing. Only after receiving the Notice of Hearing for this December 6, 2022 hearing did the Tenant’s representative advise the Landlord (and as noted not the Board) that they no longer represented the Tenants.
16. The delay caused by the adjournment was prejudicial to the Landlord, because ultimately the Tenant’s Legal counsel withdrew their services on the eve of the hearing.
17. Sub-Sections 2, 3 and 4 Section 204 of the Act provide that the Board may order a party to an applicant to pay the costs of another party. The Board’s Guideline 3 addresses costs.
18. The Guideline provides that the Board may order costs, where a party does not attend, without notice on that party, where the failure to attend caused unnecessary expense to the other party.
19. I am satisfied that the July 20, 2022 adjournment caused an unnecessary delay and that the failure of the Tenant’s legal representative to attend this hearing or advice the Board they were no longer acting for the Tenants without reasonable explanation contributed to this unnecessary delay.
20. The Landlord was seeking an amount of \$339.00 for fees, inclusive of HST for the July 20, 2022 attendance plus the application fee.
21. The application fee would normally follow the outcome of the hearing and in this case where the application is being dismissed, it is not appropriate to order the application fee be paid by the Tenant’s or the Tenant’s representative.
22. I am satisfied that the attendance fees for July 20, 2022 are reasonable and appropriate and that the Tenants and their former representative should be jointly liable to pay them in these circumstances where an adjournment was granted to afford the Tenant Representative time to prepare and then the Tenant Representative withdraws their services on the eve of the hearing, without so much as the courtesy to advise the Board and to seek instructions should another adjournment be avoided.

It is ordered that:

1. The Landlord's application is dismissed.
2. The Tenant's and the Tenant's Legal Representative shall be liable to pay to the Landlord the sum of \$339.00.
3. If the Tenants or their Legal Representative do not pay the Landlord the full amount owing on or before December 24, 2022, the Tenants will start to owe interest. This will be simple interest calculated from December 25, 2022 at 4.00% annually on the balance outstanding.

December 13, 2022
Date Issued

Robert Patchett
Vice Chair, 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.