



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

**Citation:** Canales v Manique, 2022 ONLTB 11374

**Date:** 2022-11-09

**File Number:** LTB-L-036715-22

**In the matter of:** # 1 (Main Floor), 11 WINSTON PARK BLVD  
NORTH YORK ON M3K1B8

**Between:** Francisco Gordillo Landlords  
Maria Canales

**And**

Antonio J. g. Manique Tenant

Francisco Gordillo and Maria Canales (the 'Landlords') applied for an order to terminate the tenancy and evict Antonio J. g. Manique (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the building has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord in a building that has three or fewer residential units and the Landlord resides in the building.

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 November 3, 2022. The Landlords attended the hearing and were represented by Arnold Miguel. Hector Trejo Gaspar appeared as witness for the Landlord.

**Determinations:**

1. The Landlord's application is based on a N7 notice of termination served to the Tenant on June 29, 2022 with a termination date of July 15, 2022.
2. The residential complex is a single detached dwelling. The Tenant resides in a room on the main floor. The Landlords reside in the basement unit.
3. The Tenant was in possession of the rental unit on the date the application was filed.

Substantial interference:

4. The Landlord's N7 notice of termination alleges substantial interference with reasonable enjoyment and is served pursuant to section 65 of the *Residential Tenancies Act, 2006* (the Act) which states:
- 65** (1) Despite section 64, a landlord who resides in a building containing not more than three residential units may give a tenant of a rental unit in the building notice of termination of the tenancy that provides a termination date not earlier than the 10th day after the notice is given if the conduct of the tenant, another occupant of the rental unit or a person permitted in the building by the tenant is such that it substantially interferes with the reasonable enjoyment of the building for all usual purposes by the landlord or substantially interferes with another lawful right, privilege or interest of the landlord.
- (2) A notice of termination under this section shall set out the grounds for termination.
5. In regard to section 65(1), the Landlord's N7 notice references no dates or times regarding incidents of substantial interference with reasonable enjoyment, but rather state that the conduct has occurred on "several times and is a frequent incident".
6. The Ontario Divisional Court in *Ball v. Metro Capital Property and Lockhurst* (December 19, 2002), *Toronto Docket No. 8/02*, found that subsection 43(2) of the former *Tenant Protection Act*, which is very similar to the provisions in the *Residential Tenancies Act, 2006*, requires that a notice served upon a tenant must include dates and times of the alleged offensive conduct with a detailed description of the alleged conduct engaged in by the tenant. The Court explained that a notice of termination must provide sufficient detail to allow the opposing party to know the specific allegations being made so that the opposing party can be in a position to know the case that must be met.
7. In my view, the Landlord's N7 notice, and allegations of substantial interference do not meet the test set out in *Ball* or in Section 43(2) of the Act. As such, this portion of the Landlord's application is dismissed.

Serious impairment of safety:

8. The Landlord's N7 notice also alleges that the Tenant has seriously impaired the safety of the Landlord and is served pursuant to section 66(1) of the Act which states:
- 66** (1) A landlord may give a tenant notice of termination of the tenancy if,
- (a) an act or omission of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant seriously impairs or has seriously impaired the safety of any person; and
- (b) the act or omission occurs in the residential complex.

9. On June 9, 2022 at approximately 3:16pm, the Landlord Maria Canales attended the rental unit to speak to the Tenant regarding his arrears of rent and ongoing complaints regarding harassment with his neighbouring resident. The Tenant proceeded to shout at the Landlord and subsequently pushed her into the wall. The Landlord suffered injuries, including bruising on her arms from the incident.
10. Based on the uncontested evidence before the Board, I am satisfied that the Tenant has seriously impaired the safety of the Landlord within the residential complex based on the above noted incident. The Landlord's evidence was uncontested, credible, and further supported by witness testimony. In *Furr v. Courtland Mews Cooperative Housing Inc.*, 2020 ONSC 1175 (CanLII) the Divisional Court confirmed that serious impairment of safety includes both actual impairment and a real risk of impairment.

Compensation:

11. The Tenant is required to pay the Landlord \$81.37 in daily compensation for use and occupation of the rental unit for the period from November 1, 2022 to November 3, 2022.
12. Based on the Monthly rent, the daily compensation is \$27.12. This amount is calculated as follows: \$825.00 x 12, divided by 365 days.
13. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
14. The Landlord collected a rent deposit of \$825.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$9.98 is owing to the Tenant for the period from November 1, 2020 to November 3, 2022.
15. 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:

16. 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.
17. The Tenant was not present at the hearing to dispute the Landlord's allegations and further was not present propose an alternative to eviction or give evidence that the conduct would be corrected going forward. As such, I will grant the Landlord's request for termination of tenancy.

**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 November 14, 2022.

2. If the unit is not vacated on or before November 14, 2022, then starting November 15, 2022, 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 November 15, 2022. The Sheriff is requested to expedite the enforcement of this order.
4. As of the date of the hearing, the amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the amount the Landlord is entitled to by \$567.61.
5. However, the Landlord is authorized to deduct from amount owing to the Tenant \$27.12 per day for compensation for the use of the unit starting November 10, 2022 to the date the Tenant moves out of the unit.
6. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

**November 9, 2022**

**Date Issued**

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Fabio Quattrociochi

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 May 15, 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.