



Order under Section 69 Residential Tenancies Act, 2006

Citation: Pattara v Battiston, 2026 ONLTB 2309

Date: 2026-01-08

File Number: LTB-L-076447-25

In the matter of: 101, 70 GULLIVER RD
NORTH YORK ON M6M2M6

Between: Giussepina Pattara Landlord

And

Vivian Battiston Tenant

Giussepina Pattara (the 'Landlord') applied for an order to terminate the tenancy and evict Vivian Battiston (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

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 December 9, 2025. Only the Landlord and the Landlord's Legal Representative, Sean O'Connor, attended the hearing.

As of 1:36 p.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:

1. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the application is dismissed.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On July 27, 2025, the Landlord gave the Tenant an N5 notice of termination, deemed served On July 28, 2025, with a termination date of September 15, 2025 (the 'N5 Notice'). In summary, the N5 Notice alleged the following:
 - As a follow up to order LTB-L-005161-24, issued on September 9, 2024 (the 'Previous Order'), the Landlord's Legal Representative attended the rental unit on

February 13, 2025 and on June 19, 2025 and found the unit to be in the same condition.

- The Tenant left the hot water running for a significant amount of time, which caused steam in the unit, which led to damage and mould. The estimated cost to repair the damage caused by the steam and/or mould is \$9,605.00.
- In addition to the damage, there was a significant accumulation of debris found throughout the unit, which is a fire hazard.

Preliminary Issues

4. At the hearing, I raised that, under the Previous Order, the Tenant was ordered to pay the Landlord \$9,605.00 for reasonable-out-of-pocket costs for undue damage based on the same allegations, and, therefore, it could not be ordered again. In addition, I raised that the Tenant was essentially ordered to clean up the unit by September 30, 2024, failing which, the Landlord could apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy.
5. The Landlord's Legal Representative submitted that the Landlord did not apply under section 78 of the Act because the Landlord was trying to work with the Tenant. However, there have been no significant changes to the condition of the rental unit and that this has prevented the Landlord from doing the necessary repairs.
6. I allowed the application to proceed based on the unit condition allegations noted on February 13, 2025 and 19, 2025 as the unit condition and damages alleged prior to these dates had already been decided by the Board and dealt with under the Previous Order.

Landlord's Evidence

7. The Landlord's Legal Representative submitted that he was the one who attend the rental unit on February 13, 2025 and June 19, 2025. A summary of his evidence is as follows:
 - On February 13, 2025, he inspected the rental unit and took some photos. Copies of the photos were tendered as evidence.
 - On June 19, 2025 and on or about September 11, 2025, he attended the rental unit and the condition of the rental unit remained unchanged
 - The rental unit needs to be gutted due to the damage and contractors will not go in and do the work because of the Tenant's items. The Tenant has promised that she would clean up the clutter but has not done so.
 - The Tenant's family is not willing to help her pack up her items and social services have not provided the Tenant any assistance.
8. The Landlord testified that everything in the rental unit has to be removed and that the rental unit needs to be completely redone, which he anticipated would take 30 to 45 days to complete. He stated that the unit requires mould remediation and that he has contractors lined up to do this and the renovation and/or repair work but they cannot do it with the Tenant in the rental unit.

Analysis

9. Aside from the allegations that were already dealt with in the Previous Order, what remained in the N5 Notice was a claim of poor unit condition and clutter observed on February 13, 2025 and June 19, 2025. The photos that were tendered as evidence did show some signs of clutter in the living room and the dining room areas. However, for the most part, there appeared to be clear paths to most areas of the rental unit and the unit was somewhat tidy. That said, much of the floor in the living room could not be seen due to an excessive amount of items, which I accept could be hazardous and problematic in the event of a fire.
10. The N5 Notice is a voidable notice. Subsection 64(3) of the Act provides that the notice of termination is void if the tenant, within 7 days after receiving the notice, stops the conduct or activity or corrects the omission.
11. On an application to the Board, the person who alleges a particular event occurred has the burden of proof to establish that it is more likely than not that their version of events is true. In this application, the burden falls on the Landlord to establish that the Tenant has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant and that they did not void the N5 Notice within 7 days after receiving it.
12. There was no inspection done in or around the voiding period, being from July 28, 2025 to August 3, 2025. The Landlord's Legal Representative stated that he attended the rental unit on September 11, 2025 to speak with the Tenant and could see from the doorway that nothing had changed in the rental unit. I do not find this evidence sufficient to prove that the Tenant did not void the N5 Notice as what the Landlord's Legal Representative could view from the doorway of the rental unit is somewhat limited and, in my view, is not akin to a proper unit inspection.
13. Furthermore, the evidence presented suggests that the Landlord doesn't want the Tenant to reduce the clutter. Rather, the Landlord wants the Tenant to pack up her belongings and vacate so that the Landlord can do repairs, which is not what the N5 notice is intended for.
14. For these reasons, the application must be dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

January 8, 2026
Date Issued

Rachel Gibbons
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.