



Order under Section 69 of the Residential Tenancies Act, 2006

Citation: Allan v Fitzgerald, 2026 ONLTB 2300

Date: January 6, 2026

File Number: LTB-L-088883-24-HR

In the matter of: 2, 48 Drew Street
Oshawa, ON L1H5A1

Between: John Allan
Jennifer Allan
Jacalyn Wood
Ron Wood

Landlords

and

Roxanne Fitzgerald

Tenant

WRITTEN HEARING ORDER

Procedural History of Application

John Allan, Jennifer Allan, Jacalyn Wood and Ron Wood (the 'Landlords') applied in a N5-based L2 application seeking an order to terminate the tenancy and evict Roxanne Fitzgerald (the 'Tenant') because the Landlords claimed that 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 Landlords or another tenant.

This application was scheduled for a hearing by videoconference on April 1, 2025.

On February 28, 2025, the Tenant emailed the LTB with an accommodation request, asking for a change in the hearing format from virtual to written hearing, due to the Tenant's mental health disabilities.

By a Member Endorsement issued on March 17, 2025, the Tenant's accommodation request was granted. The virtual hearing of April 1, 2025 was cancelled. Various deadlines were given for the parties to object to the written hearing format, and for the exchange and disclosure of evidence.

Determinations:

1. For the reasons below, the L2 application is dismissed.

2. The Member Endorsement gave until March 24, 2025 for any party to object to the change in hearing format. The Board did not receive any objections; therefore the hearing was conducted in writing.

Documents, Evidence and Submissions Relied On

3. The Landlord was given the deadline of April 3, 2025 to serve all their evidence and submissions to the LTB and the Tenant, along with a certificate of service.
4. The Landlord met their first submission deadline. In support of the Landlord's application, I considered:
 - the 1st N5 Notice signed by John Allan on October 1, 2024, providing 7 days to void, with termination date October 21, 2024, alleging a refusal of entry with notice;
 - the Certificate of Service signed by John Allan on October 1, 2024, stating John Allan served the N5 on the Tenant on October 1, 2024 by leaving the document in the mailbox or the place where mail is normally delivered; and served by email to the Tenant's "hotmail" email address;
 - the 2nd N5 Notice signed by John Allan on October 22, 2024, indicating the Landlords can apply immediately to the Board because this is the second notice in the past 6 months, with termination date November 6, 2024;
 - the Certificate of Service signed by John Allan on October 22, 2024, stating John Allan served the N5 on the Tenant on October 22, 2024 by leaving the document in the mailbox or the place where mail is normally delivered; and served by email to the Tenant's "hotmail" email address;
 - the L2 application form filed on November 4, 2024;
 - the 2 requests to amend the L2 application form filed on November 5 and 14, 2024;
 - "*Opening and Evidentiary Brief LTB-L-088883-24 John Allan*" (27 pages) filed April 2, 2024;
 - the Certificate of Service signed by John Allan on April 2, 2024, stating John Allan served the *Opening and Evidentiary Brief* on the Tenant on April 2, 2024 by leaving the document in the mailbox or place where mail is normally delivered; and
 - the Certificate of Service signed by Mary-Anne Thompson on April 2, 2024, stating Mary-Anne Thompson served the *Opening and Evidentiary Brief* on the Tenant on April 2, 2024 by email to the Tenant's "hotmail" email address.
5. The Tenant was given the deadline of April 13, 2025 to serve all their evidence and submissions to the LTB and the Landlord, along with a certificate of service.
6. The Tenant met their submission deadline. In support of the Tenant's defence to this application, I considered:
 - the Tenant's Declaration signed April 12, 2025 (3 pages) along with attached exhibits #1, #2, and #3;
 - the Certificate of Service signed by the Tenant on April 12, 2025, stating the Tenant served "*submissions + evidence*" on the Landlord John Allan by email to the Landlord's "rogers" email address;
 - the Tenant's Declaration signed April 13, 2025 (2 pages – labelled as p.4 and p.5 in the portal); and
 - the Certificate of Service signed by the Tenant on April 13, 2025, stating the Tenant served "*submission*" on the Landlord John Allan by email to the Landlord's "rogers" email address.

7. I note that the Tenant served Landlord John Allan with their submissions and evidence. The Landlords are represented by Mary-Anne Thompson, a licensed paralegal. As the legal representative of record, the Tenant should have served materials on Ms. Thompson. It is inappropriate for a party to communicate directly with any other party if the other party has hired a legal representative.
8. Despite the improper service on Mr. Allan, I do not find any prejudice resulted to the Landlords from it. The Tenant's email to John Allan obviously came to the attention of the Landlord's legal representative, because the Landlords filed their reply submissions responding to the submissions of the Tenant, by their second deadline. As a result, I deem that the emailed service on John Allan of the Tenant's materials was valid service.
9. The Landlords were given the deadline of April 23, 2025 for any submissions in response to the Tenant's evidence, to be served on the LTB and the Tenant, along with a certificate of service.
10. The Landlords met their response deadline. In the Landlords' response submission, I considered:
 - *"Evidentiary Brief #2 LTB-L-088883-24"* (11 pages) filed April 22, 2025; and
 - the Certificate of Service signed by Mary-Anne Thompson on April 22, 2024, stating Mary-Anne Thompson served the *Evidentiary Brief #2* on the Tenant on April 22, 2024 by email to the Tenant's "hotmail" email address.

Tenant's Preliminary Request to Dismiss Denied

11. In the Tenant's accommodation request submitted to the LTB on February 28, 2025, they asked for the LTB to consider dismissing this application based on Rule A8.2 (abuse of power) and to an order that the applicant is a vexatious litigant.
12. The Tenant did not include any submissions or evidence whatsoever with the accommodation request, to prove the claim that the applicant is a vexatious litigant or that they are exhibiting an abuse of power. Therefore, the preliminary request from the Tenant's accommodation request to dismiss the application is denied.

Landlords' Requests to Amend Application Granted

13. The Landlords submitted a request to amend the application on November 5, 2024. It was to correct the spelling of the last name of the Landlord Jennifer Allan.
14. The Landlords submitted another request to amend the application on November 14, 2024. The proposed change was to check off in "reason 1" that the Tenant had been given a 1st N5.
15. There was no Certificate of Service submitted by the Landlords showing how these 2 requested amendments were served on the Tenant, as required by Rule 15 of the LTB's *Rules of Procedure* (the 'Rules'). Nevertheless, I find that there would be no prejudice to the Tenant by allowing these amendments because they were to correct two typographical errors in the application.

16. The requests to amend are granted.

L2 Application – Dismissed for 1st N5 Being Voided

17. The Landlords seek eviction in this application based on a 2nd N5 Notice.

18. Before considering the validity of the 2nd N5, I must confirm the validity of the 1st N5, ensure it was not voided by the Tenant, and ensure the Landlords proved on a balance of probabilities a claim from the 1st N5 that there was a substantial interference of reasonable enjoyment.

19. Based on the information contained in the 1st N5 and accompanying certificate of service, I find it complied with section 43 of the *Residential Tenancies Act, 2006* (the 'Act').

20. The 1st N5 alleged on September 25, 2024 at 1pm, the Tenant denied entry to a real estate agent and a prospective buyer, even though a 24 hour notice was given, and they followed all safety precautions in compliance with a prior LTB consent order.

21. The Landlord John Allan deposed in his affidavit (exhibit 1 of the Landlords' evidentiary brief) the following:

- the parties had a prior consent order in place (exhibit 1) which required people attending the rental unit to wear masks, gloves, and booties;
- the Tenant consented in writing to service by email (signed consent at exhibit 2);
- the property was listed for sale on September 9, 2024 (listing at exhibit 3);
- Mr. Allan advised the realtor Dave Sachko of all safety precautions as per the consent order;
- on September 24, 2024 at 9:53am Mr. Allan emailed the Tenant with a Notice of Intent to Enter for a house showing on September 25, 1-1:30pm and also hand delivered it to her mailbox (email at exhibit 4); and
- he received an email from Mr. Sachko on September 25, 2024 that the realtor was unable to enter (email at exhibit 5).

22. Tenants have a right to void a 1st N5, as provided by section 64(2)(c) and 64(3) of the Act.

23. The 1st N5 Notice was served on the Tenant on October 1, 2025. This means the 7 day voiding period was between October 2 to 8, 2025.

24. To void a 1st N5 Notice, a tenant can either stop the conduct or activity that is complained of, or correct an omission.

25. The nature of the conduct complained of from the 1st N5, was for the Tenant to stop denying entry. This would require the Tenant to "correct an omission". The omission was not allowing entry despite 24 hour notice and despite proper protective safety equipment.

26. The Landlords would only be able to demonstrate the Tenant did not void the 1st N5, if they submitted evidence showing the Landlords attempted another entry during the voiding period, which the Tenant again refused.

27. It was not within the control of the Tenant when or how often the Landlords attempted entry for real estate showings.

28. The Landlords did not submit any evidence that they attempted an entry during the voiding period, nor that the Tenant denied entry again during the voiding period.
29. The denied entry of September 25, 2024 was the only incident listed in the 1st N5 Notice.
30. The next dates deposed within Mr. Allan's affidavit were regarding a notice of entry given on October 17, 2024 for a real estate showing the Tenant denied on October 18, 2024.
31. Based on the submissions of the Landlords, I find that during the seven days after receiving the 1st N5 on October 1, 2024, the Tenant stopped the conduct or activity, or corrected the omission.
32. Only if the 1st N5 had not been voided, could the Landlords serve a 2nd N5 for any additional complaints arising from the period between 8 days after the 1st N5 was served to 6 months.
33. In this case, if the Tenant denied entry again on October 18, 2024, the Landlords should have served another 1st N5, providing the Tenant another opportunity to void. That was not done. Instead, the Landlords served a 2nd un-voidable N5.
34. In light of my determination that the 1st N5 Notice was voided by the Tenant, it is unnecessary for me to consider any further submissions of the Landlords or the submissions of the Tenant.
35. Since the 1st N5 was voided, the Landlords cannot file a L2 application. The application must be dismissed.

It is ordered that:

36. The Landlords' L2 application is dismissed.

January 6, 2026
Date Issued

Michelle Tan
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.