



Order under Section 69 Residential Tenancies Act, 2006

Citation: Kong v Hancock, 2026 ONLTB 513

Date: 2026-01-09

File Number: LTB-L-086100-25

In the matter of: #906, 1815 YONGE ST
TORONTO ON M4T2A4

Between: Yik Man Kong Landlord

And

Kathlena Hancock Tenant

Yik Man Kong (the 'Landlord') applied for an order to terminate the tenancy and evict Kathlena Hancock (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 previously adjourned on November 18, 2025. The adjourned hearing for this application was heard by videoconference on December 16, 2025. The Landlord and the Landlord's representative, Pui Sze Cheung, attended the hearing. As of 9:36 pm, 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 and the claim for compensation in the application. Therefore, the application is dismissed.
2. The Tenant was in possession of the rental unit on the date the application was filed on October 15, 2025.

N5 Notice of Termination – Substantial Interference

3. On October 2, 2025, the Landlord served the Tenant with an N5 Notice to end the tenancy for substantially interfering with the Landlord's lawful right, privilege, or interest by failing to temporarily move out of the unit in order for the Landlord to complete emergency repairs as a result of sewer water damage to the unit.
4. The date of tenancy termination in this notice is October 24, 2025. I am satisfied that the N5 Notice was properly served.
5. The N5 Notice gave the Tenant an opportunity to void the notice within 7 days, from October 3, 2025, to October 9, 2025, by temporarily moving out of the unit for a period of four to six weeks to enable completion of water damage repairs.
6. On October 15, 2025, the Landlord filed an L2 application with the Board, seeking to terminate the tenancy on the basis of the N5 Notice. I am satisfied that the L2 application complied with s. 69 and s. 70 of the Act.

Landlord's Uncontested Evidence

7. The Landlord testified that on September 16, 2025, she advised the Tenant via email that she needs to temporarily vacate the unit for 4-6 weeks, to include removing her possessions, to complete emergency repairs of water damage in the unit that occurred on September 2, 2025, from a sewer back-up in the kitchen sink. The Landlord stated that she called the Tenant on September 17 and 29, 2025, and emailed her on September 22 and 24, 2025, to inform her that she had to temporarily move out to complete the repairs and possible mold remediation, given that the contaminated sewer water in the unit was dangerous to her health and the extensive repairs could not be completed if she continued to reside in the unit.
8. The Landlord asserted that the Tenant advised her that she would not move out of the unit, and that she could remain in the unit during the repairs. The Landlord noted that the Tenant has not moved out of the unit as of the day of the hearing, and as a result, the repairs and mold remediation have not been completed, and she is unable to fulfill her maintenance obligations pursuant to s. 20(1) of the Act.
9. The Landlord explained that the repairs include the removal and replacement of flooring, trim, plumbing, kitchen cabinets and countertops, appliances, drywall, and insulation to repair damage and remedy potential mold. The Landlord stated that the contractor advised her that the Tenant would not be able to safely reside in the unit during the repairs for several reasons, to include: the unit is contaminated from sewer water requiring protective clothing; the unit would be an active construction site; and the unit would not have a functioning kitchen. The Landlord submitted a Plumbing Inspection Report with five photos of the water damage, from Cobra Plumbing and Drains Inc, dated September 2, 2025. The Landlord also submitted an Inspection Report with 13 photos of the water damage and a unit vacant possession requirement from Winmar Property Restoration Specialists, dated September 5, 2025. The Landlord also submitted a Scope of Work with a unit vacant possession requirement for hazardous material reasons from Winmar Property Restoration Specialists, dated November 12, 2025.

10. The Landlord testified further that her contractor for the repairs advised her that a building permit is not required to complete the repairs, nor is a rental renovation license, pursuant to Toronto By-Law 53-2025, required to complete the repairs. She noted, that for this reason, she never served the Tenant with an N13 Notice to seek vacant possession of the unit for the purpose of the repairs, in accordance with s. 50(1)(c), and s. 73(1)(b) of the Act.
11. The Landlord asserted that if the Tenant does not vacate the unit as soon as possible, the potential for mold will increase, and the damage to the unit will increase. She noted that this additional damage would not be covered by her insurance. The Landlord submitted an email exchange with her insurer, dated November 10, 2025. The Landlord noted that the Tenant has continued to pay her rent since the N5 Notice date of termination.

Analysis - Voiding the N5 Notice

12. In accordance with s. 64(3) of the Act, the N5 Notice is a voidable notice that provides a tenant with an opportunity to void the termination of the tenancy, and not move out of a unit, by correcting the behaviour that resulted in the N5 Notice being served. In this matter, the behaviour that required correcting was the Tenant's continued residence in the unit; therefore, the only method for the Tenant to void the termination of her tenancy was to provide vacant possession of the unit to the Landlord for a period of 4 to 6 weeks. I find this to be contradictory to the intent of s. 64(2)(c) and s. 64(3) of the Act to provide the Tenant with an opportunity to avoid vacating her unit.
13. Furthermore, if the Tenant voided the N5 Notice by moving out of the unit, the Tenant has no right of return which is contrary to the spirit and intent of s. 50 of the Act. The Tenant must have an opportunity to void the N5 Notice. Moving out does not void the notice, it ends the tenancy pursuant to s. 37(2) of the Act.
14. I therefore find that the Landlord's N5 Notice did not provide the Tenant with a viable opportunity to void the N5 Notice in accordance with s. 64(2)(c) of the Act. Accordingly, I find that the Landlord's N5 Notice is defective, and the Landlord's application seeking a termination of the tenancy must be dismissed.

Analysis – Validity of an N13 Notice

15. In this matter, I find that an N13 Notice of Termination, pursuant to s. 50(1)(c) of the Act is not appropriate for the following reasons.
16. Section 50(1) of the Act states:

A landlord may give notice of termination of a tenancy if the landlord requires possession of the rental unit in order to,

- (a) demolish it;
- (b) convert it to use for a purpose other than residential premises; or

- (c) do repairs or renovations to it that are so extensive that they require a building permit and vacant possession of the rental unit.

17. Section 73(1) of the Act states:

The Board shall not make an order terminating a tenancy and evicting the tenant in an application under section 69 based on a notice of termination under section 50 unless it is satisfied that,

- (a) the landlord intends in good faith to carry out the activity on which the notice of termination was based; and
- (b) the landlord has,
 - (i) obtained all necessary permits or other authority that may be required to carry out the activity on which the notice of termination was based, or
 - (ii) has taken all reasonable steps to obtain all necessary permits or other authority that may be required to carry out the activity on which the notice of termination was based, if it is not possible to obtain the permits or other authority until the rental unit is vacant.

18. On the basis of the Landlord's uncontested evidence, as provided in paragraph 10 above, I am satisfied that a building permit is not required for the repair and restoration work. Accordingly, serving an N13 Notice pursuant to s. 50(1)(c) of the Act is not applicable, and s. 73(1)(b) of the Act also does not apply. Without an N13 Notice, the City of Toronto By-law 53-2025, the Rental Renovation License By-law that came into effect on July 31, 2025, does not apply in accordance with section 662-2.1 of the By-law – *Licensing required*.

Options for the Parties

19. Under these circumstances, often a landlord and a tenant negotiate a process to complete the repairs and the tenant never gives up the keys and care and control of the unit. Legally the tenant remains in possession even if the tenant moves his or her possessions. If the tenant is unwilling or unable to remove all of his or her possessions or stay elsewhere, often a landlord is able to offer the tenant storage elsewhere, or have a contractor move the tenant's possessions around the unit while the work is being done one room at a time. This may be very inconvenient and difficult for a contractor, but it is achievable if both parties agree and take necessary safety precautions.
20. An N5 Notice would be appropriate if a tenant refuses to cooperate with a landlord to work out the details of a reasonable arrangement for necessary repair work that would permit the tenant to retain possession of the unit. However, an N5 Notice requiring a tenant to provide vacant possession is not appropriate for the reasons provided in paragraphs 12, 13 and 14.

21. A further option for a landlord under these circumstances, when a building permit is not required, is to determine from the municipality whether a building permit could be issued for the repairs. If a building permit is issued, s. 50(1)(c) of the Act applies, an N13 Notice may be served to the tenant, and then s. 73(1) of the Act, and in this matter, City of Toronto By-law 53-2025, would also apply.

It is ordered that:

1. The Landlord's application is dismissed.

January 9, 2026
Date Issued

Frank Ebner
Member, Landlord and Tenant Board

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