



Order under Section 69 Residential Tenancies Act, 2006

Citation: NGUYEN v SMIT, 2026 ONLTB 5120

Date: 2026-01-21

File Number: LTB-L-087885-25

In the matter of: 4, 2053 FORD BLVD
WINDSOR ON N8T2E6

Between: VAN NGUYEN Landlord

And

FAWN SMIT Tenant

VAN NGUYEN (the 'Landlord') applied for an order to terminate the tenancy and evict FAWN SMIT (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 Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises;
- the number of persons living in the unit on a continuing basis is more than permitted by health, safety or housing standards;
- 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 residential complex has wilfully caused undue damage to the premises;
- the Tenant has been persistently late in paying the Tenant's rent.

This application was heard by videoconference on January 12, 2026.

The Landlord and the Tenant attended the hearing.

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.
3. The rental unit is a two-bedroom apartment on the second floor of a four unit complex.
4. The tenancy began around April 1, 2018.

N5 Notice of Termination

5. On September 2, 2025, the Landlord gave the Tenant an N5 notice of termination alleging that the Tenant caused excessive noise, had unauthorized guests or co-habitants and drug usage.
6. In the N5 notice, the Landlord advised the Tenant that she can apply to the Board immediately for an order to evict the Tenant.
7. As explained at the hearing, as per s.68(1)(a), service of a first N5 notice is a precondition to serving a second N5 notice. The Landlord must also include the first N5 notice and Certificate of Service when filing the L2 application even if relying upon the second N5 notice at the hearing.
8. The Landlord believed that by verbally giving multiple opportunities to the Tenant to correct her alleged behaviour, this should satisfy the notice requirements.
9. The Landlord also submitted on the date of the hearing another N5 notice served to the Tenant on September 30, 2025. This was not filed with the Board with the application. Again, the Landlord did not allow the Tenant to void the notice.
10. I find the Landlord failed to serve to the Tenant and file with the LTB a first N5 notice. As such, this portion of the Landlord's application is dismissed.

N7 Notice of Termination – Serious Impairment of Safety and Wilful Damage

11. On September 2, 2025, the Landlord also gave the Tenant an N7 notice of termination alleging that the Tenant seriously impaired the safety of another person at the residential complex and caused wilful damage. The allegations relate to the Tenant and her guest damaging lawn equipment, flower pots benches, a door, a window and running water. The Tenant and her Tenant's guest disturbed other tenants.
12. As explained to the Landlord at the hearing, an N7 notice of termination is for short notice termination, with no opportunity for the Tenant to rectify the issues. This type of application is given priority eviction by the Sheriff. I believe the legislature intended to reserve this application for the most serious of situations. I also explained that there are other grounds for termination available for less serious conduct.
13. Having understood the legal test, the Landlord opted to proceed with the merit hearing.

The June 29, 2024 incident

14. The Landlord testified that on this date, the Tenant and her guest kicked over other tenants' lawn equipment and broke flower pots, benches and a window.

15. At the hearing, I explained to the Landlord that had this been such a serious issue, warranting an N7 notice, she had opportunity to serve notice to the Tenant and file with the Board.
16. Based on the submissions of the Landlord and the passage of time, I found it reasonable to dismiss this portion of the claim.

The July 9 and 12, 2025 incidents

17. The Landlord testified that the Tenant and her guest jammed a door at the rental unit which allowed people access and the Tenant's guest yelled and banged on other tenants' doors at 4:00 am. The police were called by the lower unit tenant.
18. The Landlord states this caused stress to a neighbouring tenant and the Tenant and her guest's behaviour seriously impaired the safety of the tenant. Very limited detail was provided by the Landlord.
19. I note, no documentary evidence was led to support this claim and the Landlord did not call any witnesses.

The August 1 and October 15 2025 incidents

20. The Landlord testified that the Tenant left garbage all over the residential complex and in her unit. The Tenant was advised to ensure taps were properly turned off on many occasions but left water running which caused a leak and damage to the lower unit. The Tenant caused noise at random hours and her guest was hanging out the second story window which seriously impaired his safety. The Landlord also believes the Tenant's conduct resulted in wilful damage as the Tenant was put on notice via text messages regarding the water.
21. The Landlord attempted to rely on the text messages as evidence. However, the Landlord failed to produce the actual text message. Rather, she provides a synopsis of the messages. The Tenant took issue with this and said she is unaware of the actual text messages.
22. The Landlord confirmed receipt of the Notice of Hearing but said did not read the entirety of the notice, specifically the section regarding evidence.

The Landlord's Request to Withdraw the Application

23. At this point, the Landlord requested to withdraw her application.
24. As per s.200(4) of the Residential Tenancies Act, 2006 (the 'Act') id did not consent to the Landlord's withdrawal request.
25. In my view, the Landlord was provided with the specifics regarding the notices and evidence and failed to due her due diligence in understanding her requirements. To allow her, at this late stage, to withdraw her application in an effort to perfect it, would be extremely prejudicial to the Tenant. The Landlord bears the burden of proof and the time

to prepare to defend the application was before the hearing, not after learning of the deficiencies.

26. The Landlord proceeded with her oral testimony.

The Tenant's Position

27. At the hearing, I determined that there were no substance claims related to garbage and noise and invited submissions related to the door jamming incident, the damage resulting from running water and the hanging out the second story window.

28. The Tenant said that she did not cause any damage to the door. Any claimed damage is related to weather. Her actions did not impair safety of others.

29. I note, the N7 notice does not claim damage but simply states the Tenant and her guest jammed the door to allow access to others. I can make no finding that these actions seriously impaired the safety of others.

30. With respect to the claims of water damage, the Tenant said that she reported a maintenance issue to the Landlord and the Landlord failed to properly address it. She said was told not to take baths and limit the use of water. She said she seldom showers at the rental unit, opting to use her boyfriend's facilities.

31. With respect to the claims of impaired safety related to the window, she said her boyfriend was working on an air conditioning unit and his safety was not impaired.

Analysis

32. As per s.63(1)(a) and (b) and s.66(1) of the Act, the Board may only terminate a tenancy and evict a tenant based on a finding that the Tenant seriously impaired the safety of others at the residential complex and/or the Tenant wilfully caused damage to the rental unit as claimed in the Landlord's application.

33. In my view, the Landlord's description of the grounds for the N7 notice, overall, does not include sufficient details to substantiate an N7 notice, which, based on the requirements of the Act, requires expedited eviction.

34. On the evidence before the Board and on a balance of probabilities I cannot make a finding that the Tenant seriously impaired the safety of others at the residential complex as claimed on July 9, 2025, July 12, 2025, August 1, 2025 or October 15, 2025. I also cannot find that the Tenant or her guest caused wilful damage at the rental unit or residential complex on the dates as claimed in the N7 notice.

35. The allegations in the N7 notice are dismissed because the Landlord could not make out a prima facie case to support them. Therefore, the entirety of the N7 notice is dismissed.

36. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The Landlord's application is dismissed.

January 21, 2026

Date Issued

Dana Wren

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.