



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

Citation: Green Acres Mobile Home Park v Massiah, 2023 ONLTB 62024

Date: 2023-09-20

File Number: LTB-L-024846-22

In the matter of: 28, 33 Pitt Street
Port Burwell ON N0J1T0

Between: Green Acres Mobile Home Park

And

Dawn Massiah

I hereby certify this is a
true copy of an Order dated

SEP 20, 2023

Landlord and Tenant Board

Landlord

Tenant

Green Acres Mobile Home Park (the 'Landlord') applied for an order to terminate the tenancy and evict Dawn Massiah (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 September 5, 2023.

The Landlord's Agent Shirley McKibbin and the Landlord's Legal Representative Joe Hoffer and the Tenant Dawn Massiah and the Tenant's Legal Representatives Rachel Stojni and Shaun Harvey attended the hearing.

Determinations:

1. For the following reasons, the Landlord's application is dismissed.
2. All notices of termination must comply with section 43 of the *Residential Tenancies Act, 2006* (the 'Act'), including the mandatory requirement in subsection 43(2) of the Act to "set out the reasons and details respecting the termination".
3. In *Ball v Metro Capital Management Inc.* [2002] OJ No 5931 (Div Crt)] the Divisional Court considered subsection 43(2) of the Act and found that the purposes of requiring that a landlord provide reasons and details on a notice given pursuant to the Act was to: (a) allow the tenant to be in a position to know the case to be met before the Board; (b) allow the tenant to decide whether or not to dispute the allegations made by the landlord; and, in the case of a voidable notice, (c) allow the tenant to stop the conduct or activity or correct the omission. The Divisional Court found that, to be in compliance with subsection 43(2), a notice should include dates and times of the alleged conduct, together with a detailed description of the alleged conduct. [*Ball v Metro Capital Management Inc.* [2002] OJ No

5931 (Div Crt), paras 10 and 12.] In *Ball*, a notice that did not meet these requirements was found void.

4. In the present case, the Landlord's application is based upon a second non-voidable N5 Notice of Termination given under subsection 68(1) of the Residential Tenancies Act, 2006 (the 'Act'), which provides:

68 (1) A landlord may give a tenant notice of termination of the tenancy if,

(a) a notice of termination was given to the tenant under section 62, 64 or 67; and

(b) more than seven days but less than six months after the notice mentioned in clause (a) was given to the tenant, an activity takes place, conduct occurs or a situation arises that constitutes grounds for a notice of termination under section 60, 61, 62, 64 or 67, other than an activity, conduct or a situation that is described in subsection 61 (1) and that involves an illegal act, trade, business or occupation described in clause 61 (2) (a).

5. The Landlord's first voidable and the second non-voidable N5 Notices of Termination were both given pursuant to subsection 64(1) of the Act, which provides:

64 (1) A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.

6. The Landlord mailed the Tenant the first voidable N5 notice, and it was deemed served on February 13, 2022.

7. The reasons and details provided in the schedule attached to the notice provide no times any of the alleged conduct is to have occurred. The first allegation does not include the date the issue started. The last allegation contains no dates or times for any of the issues claimed. The schedule attached to the N5 notice sets out the following claims:

- a) The Landlord has received complaints that since October, 2021 garbage and buckets of sticks and stones belonging to the Tenant are being stored by the Tenant on the greenspace between the Tenant's mobile home and the Lennox's mobile home creating an eyesore which, in isolation, is not substantial but which taken together with the Tenant's conduct below, constitute interference.
- b) On October 19, 2021 during the day, Brent Moir Plumbing attended at the Lennox's unit to complete some work on the Lennox's home. The Tenant then set up a table near the contractor's sawhorse/workstation; placed an audio device on it, and played music and CBC radio very loudly and repeatedly interrupted the contractors thereby disrupting them from their work on the Lennox's home.

- c) On January 3, 2022 Ms. Lennox observed the Tenant taking photos of their vehicle, VIN and licence plates in the visitor parking area. The Tenant said to Ms. Lennox: "lipstick on a pig... you are still a pig".
 - d) On January 9, 2022 Ms. Lennox was outside her mobile home attempting to install cardboard to prevent wind from blowing under the home. The cardboard tipped over, catching the edge of the Tenant's deck. The Tenant pounded on the window and yelled "get your fucking ass off my deck".
 - e) On February 2, 2022 a Police Officer attended at the Lennox resident in responding to a complaint by the Tenant that the Lennoxes had engaged in threatening conduct toward the Tenant; however, the Lennoxes were not even at the residential complex at the time. The false accusations made by the Tenant and the police intervention was a frightening experience for the Lennoxes.
 - f) The Lennoxes have complained to the Landlord that the Tenant continually watches and takes photos of them and makes false and defamatory allegations against them. The Lennoxes have felt so harassed by the Tenant's behaviour that they stayed for several days in a nearby bed and breakfast to avoid confrontations with the Tenant. Ms. Lennox suffers from anxiety following a serious automobile accident and the Tenants' harassment, false accusations and verbal abuse has seriously aggravated that anxiety.
8. I am mindful the decision in *Ball* states a notice of termination "should" include dates and times of the alleged conduct. It does not say "must". There are certainly cases where it is not strictly necessary or possible to provide a tenant with precise dates and times for the conduct being alleged. For instance, a landlord may discover damage to a rental unit during an inspection after damage has already occurred. In such a case, the date of discovery would be sufficient since the landlord could not know the date and time the damage occurred.
 9. In the present case, all of the allegations are missing particulars the Landlord would have had or should have had. They are the entity receiving complaints and gathering information to serve the N5 notice. At the hearing, the Landlord provided no reasonable explanation for why the Tenant was not provided the missing particulars on the N5 notice.
 10. Since the Landlord had or could have had all the relevant details, I find this case to be different from the damage scenario I have described above. As such, I find the N5 notice should have included dates **and** times of the alleged conduct in order to comply with section 43(2) of the Act as well as the decision in *Ball*.
 11. The Landlord argued the first N5 notice is sufficient since the Tenant was involved and is therefore aware of the issues and when they occurred. I disagree with the Landlord's argument because it requires an assumption that the alleged conduct actually occurred. I am not persuaded by the argument that the Tenant was there and knows what the allegations are about.

12. The Landlord also argued the Tenant was free to deny the allegations. While this is correct, the N5 notice is to allow the Tenant to know the case to be met so that they can decide whether to dispute the allegations and prepare for the hearing accordingly.
13. The first allegation contains no date the alleged conduct began. It requires the Tenant to account for the condition of the green space each day during a period that began sometime in October of 2021. I find this lack of detail would make it difficult to know the case to be met and to decide whether or not to dispute the allegation.
14. The last allegation on the first N5 notice contains no dates or times whatsoever and reads as a summary of the Landlord's claims against the Tenant. It does not articulate any particular event and I find this lack of detail would make it difficult to know the case to meet and therefore difficult to adequately respond to the claim.
15. The remaining allegations do include the dates the Landlord is alleging the conduct occurred. However, I find the allegations are of such a nature the Landlord could have included the time of day the events occurred. I find the particulars of these claims are not sufficiently precise because they require the Tenant to review their conduct and whereabouts for every minute of every day for January 3, 2022, January 9, 2022 and February 2, 2022 in order to respond to the Landlord's allegations. For the allegation made in relation to October 19, 2021, the Tenant would be required to review their conduct and whereabouts for the entirety of the daylight hours.
16. Including the time of day the events are alleged to have occurred provides a fulsome picture to the Tenant, allowing them to adequately respond. If for instance, a landlord alleges behaviour to have occurred at 1 p.m. a tenant might wish to submit evidence they were not at the location at that time. Without the times the events occurred a tenant cannot know when they need to account for.
17. The failure on the part of the Landlord to include the time of day the alleged conduct occurred places an unfair and unnecessary burden on the Tenant in making an adequate response. Additionally, the Tenant would be required to respond in the moment, during the hearing, when evidence is presumably called as to when the alleged incidents occurred.
18. I find the time of day the alleged conduct occurred to be a vital piece of information the Tenant requires to adequately answer to the allegations. I reject the argument that the Tenant knows what the issues are because they were involved. In my view, the first N5 leaves the Tenant in the position where they have to guess or speculate about the Landlord's allegations.
19. For these reasons, I do not find the first N5 notice complies with section 43(2) of the Act and the decision in *Ball*. As such, I find the first N5 notice invalid.
20. Since this first N5 notice is a nullity, the Landlord was not entitled to give the Tenant a second, non voidable N5 notice of termination. As this application is based on this second N5 notice, the application must be dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

September 20, 2023
Date Issued



John Cashmore
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.