



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

Citation: Colaizzi v Santerre, 2022 ONLTB 2911

Date: 2022-08-09

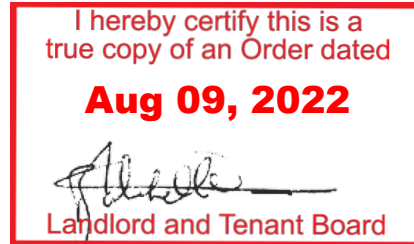
File Number: LTB-L-022373-22

In the matter of: 101, 93 Rye Road
SOUTH RIVER ON P0A1X0

Between: Monika Colaizzi

And

Bobby Santerre, Krystal Ruplall



Landlord

Tenant

Monika Colaizzi (the 'Landlord') applied for an order to terminate the tenancy and evict Bobby Santerre, Krystal Ruplall (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 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 used the rental unit or the residential complex in a manner that is inconsistent with use as a residential premises and that has caused or can be expected to cause significant damage.

Monika Colaizzi (the 'Landlord') **also** applied for an order requiring Bobby Santerre, Krystal Ruplall (the 'Tenant') to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

This application was heard by videoconference on August 2, 2022.

The Landlord and the Tenant attended the hearing.

Determinations:

1. The residential complex is a Land Lease community. The Tenants occupy a lot within the residential complex.

2. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy and/or the claim for compensation in the application. Therefore, the application is dismissed.

N5 Notice of Termination

3. On April 15, 2022 the Landlord gave the Tenant an N5 notice of termination by mail, deemed served on April 20, 2022. The Landlord indicated that this was the “second n5” served within the previous six months.
4. At the hearing the Landlord confirmed that there was not a “first N5” served on the Tenants. As a result, the N5 served on the Tenants was defective in that it indicated it was the second N5, where it was not.
5. As a result, the N5 being defective, the application would not proceed on the N5.

N7 Notice of Termination

6. On April 15, 2022, the Landlord gave the Tenant an N7 notice of termination by mail, deemed to be served on April 20, 2022. The notice of termination contains the following allegations:
 1. Reason 1: The behaviour of the Tenant has seriously impaired the safety of another person;
 2. Reason 2: The Tenants have willfully damaged the residential complex;
 3. Reason 3: The Tenants are using the rental unit in a way that is inconsistent with its use as a residential premise.
7. The details set out in the N7 notice of termination specify that:
 1. The Tenant Bobby Santere accosted the property manager/owner and other members of community while on the main road on April 14, 2022 at 4L20 p.m. Also that the property manager/owner were threatened and verbally abused.
 2. In 2021/2022 the tenants cut down over 40-80 trees without permission causing permanent damage.
 3. Tenants are using the residential lot within an off-grid community that is inconsistent with most rules within membership agreement causing damage/turmoil.
8. The Landlord was the only witness for the Landlord to testify.

9. The Landlord testified that on April 14, 2022 that employees went to take photos of lot 101 to document the damage in support of the N7. The landlord stated that at no time did the employees set foot on Lot 101. The Tenant appeared, and “got angry” and refused to understand that they were providing information for the LTB. Finally, they left to avoid any confrontation.
10. The Tenant Bobby Santere testified that he thought the employees were on his lot to take photos of inside his house and the lot. A video (DOC206371) was made by the Tenant of this incident and played at the hearing. The video showed the confrontation between the Tenant and the employees. From the video it appeared that the Tenant was telling the employees to stay off his property. At one point, the property manager walks towards the Tenant and appears to be suggesting to the Tenant that they fight and it would be “the last thing you do”.
11. The Landlord testified that they have stayed away from the Tenant which gave him the opportunity to cut trees down on the property.
12. The Landlord did not provide any photos of the cut trees or other damages alleged. In addition, there were no estimates of the costs to replace the trees.
13. The Landlord reviewed the contents of the Land Lease agreement and membership rules (DOC120201). The Landlord testified that a copy had been given to the Tenant before occupancy, but that a signed copy was never returned. The Landlord highlighted the section in SCHEDULE 1 of the agreement, that address “Abuse/Violent or Disorderly Behaviour. It was described as a “zero tolerance” policy against violence. It states:

“All/any threatening and abusive behavior will not be tolerated at Arcadia. Failure to comply will merit for this agreement to be immediately terminated by the Owner. Occupants will have 30 days to vacate the premises.”
14. I am not satisfied that there is sufficient evidence from this single incident to seriously impair the safety of another. The Landlord’s testimony is hearsay at best, given that the none of the employees implicated, testified as to the events. The Tenant’s video shows a different version where the property manager appears to be trying to get the Tenant to engage in a fight. This suggests to me that the Landlord does not have clean hands in the incident and may have contributed to the outcome.
15. I am not satisfied that the Tenant has willfully damaged the residential complex. The Landlord led no evidence in this regard. Therefore, I find that this allegation was not pursued by the Landlord at the hearing.
16. I am not satisfied that the Tenant is using the rental unit in a way that is inconsistent with its use as a residential premise. The Landlord did not point out any of the rules in the agreement, that the Tenants were alleged in breach of (setting aside the clause on violence). Even if the Tenants were not abiding by the lease agreement and membership rules, this allegation is best considered under section 64 of the Residential Tenancies Act, 2006 (the ‘Act’) which states:

(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.** (emphasis added)

17. It was noted that the lease agreement specifies that “each occupant is responsible for their own water (either by installing their own water collection system or purchasing potable water)”. This paragraph is void. Ontario Regulation 517/06 paragraph 31 puts the onus on the Landlord to ensure there is sufficient potable water and water pressure available for each unit in a land lease community. The Landlord insisted that this was an “off-grid” community to explain why no water is being provided. In my view this would have been sufficient reason to grant relief from eviction for failing to provide a vital service.
18. The Landlord has not proven the allegations in the N7 notice of termination for the reasons noted above. Therefore the Landlords application must be dismissed.
19. The Landlord also testified regarding other incidents that have occurred before and since the N7 was served on the Tenants. However, I need not consider these, since the allegations in the N7 notice of termination must be established first, before I consider any other conduct in all of the circumstances pursuant to section 83 of the Act.

It is ordered that:

1. The Landlord’s application is dismissed.

August 9, 2022
Date Issued



Robert Patchett
Vice Chair, 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.