



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

Citation: 2765749 Ontario Corporation v Gerald Miller, 2023 ONLTB 39517

Date: 2023-05-30

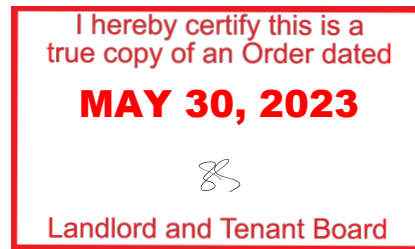
File Number: LTB-L-026124-22

In the matter of: 203, 871 ADELAIDE ST N
LONDON ON N5Y2M2

Between: 2765749 Ontario Corporation

And

Gerald Miller



Landlord

Tenant

2765749 Ontario Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Gerald Miller (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.

This application was heard by videoconference on May 15, 2023.

The Landlord's Agent James Fernandez and the Tenant Gerald Miller and the Tenant's Agent Kevin Tyrer 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. Therefore, the application is dismissed.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. Subsequent to filing this L2 application, the Landlord served the Tenant with additional N5 notices. I explained to the Landlord the allegations contained on those notices would not be considered in support of their application for eviction. This did not preclude the Landlord from relying on the allegations in relation to considerations under section 83 of *Residential Tenancies Act, 2006* (the Act).
4. On April 20, 2022, the Landlord gave the Tenant a voidable N5 notice of termination deemed served on this same date. The termination date in the notice is May 31, 2022. The notice of termination contains a number of allegations however at the hearing the Landlord advised the Board they were only proceeding on three of them. These allegations are:
 - a) On April 12, 2022 there was a strong smoke smell emanating from the Tenant's unit, into common area staircase and hallway. Multiple tenants reported the smell.

- b) On April 19, 2022, multiple tenants reported a strong smell of feces emanating from unit 203. Representatives went to check the plumbing but were denied entry. Notice of entry was then provided for the April 20, 2022.
- c) On April 20, 2022, representative entered the unit and found human feces in the bathroom, on the hallway floor, in the entryway, kitchen and living room. It appears it has been there for multiple days and walked through an spread around. The Tenant's caseworker was contacted and advised that the caseworker will handle cleaning of the unit. Inspection booked for April 28, 2022. Unit has dozens of cigarette butts and a strong smell of smoke. It appears the tenant is smoking inside of the unit, which is prohibited by the lease agreement.

5. Section 64(3) of the Act reads as follows:

The notice of termination under subsection (1) is void if the tenant, within seven days after receiving the notice, stops the conduct or activity or corrects the omission.

- 6. The Landlord's Agent Mr. Fernandez testified the follow up inspection on April 28, 2022 revealed the unit had been cleaned up. Mr. Fernandez acknowledged the Tenant voided all of the allegations except the claims related to smoking in the rental unit.
- 7. Mr. Fernandez testified that on April 28, 2022, during the inspection of the rental unit the Tenant was not found to be smoking. I asked Mr. Fernandez if the Tenant had stopped smoking inside the rental unit during the voiding period of April 20 to April 27, 2022 and he responded that he did not know because they did not enter the unit multiple times.
- 8. Mr. Fernandez testified that during the inspection of the unit on April 28, 2022 there was no evidence of smoking found in the rental unit. There was an empty ashtray and no cigarettes found in the unit.
- 9. Mr. Fernandez's evidence was that during the inspection on April 28, 2022, the smell of residual cigarette smoke was still present in the hallway.
- 10. I find on a balance of probabilities the Tenant stopped the conduct or activity or corrected the omission within seven days after receiving the N5 notice of termination. The rental unit was cleaned up when the inspection took place on April 28, 2022. There was no evidence the Tenant smoked in the rental unit during the period from April 20, 2022 to April 27, 2022. I find these were the actions required on the part of the Tenant in order to void the N5 notice.
- 11. While there may have been an odour of residual smoke in the hallway after the voiding period had ended, the N5 notice does not stipulate the Tenant was required to clean the common areas in order to void the notice. The Landlord, pursuant to *Ball v Metro Capital Management Inc.* [2002] OJ No 5931 (Div Crt)], is required to provide sufficient details to a Tenant so they have enough information to void the notice. If it was the Landlord's expectation that the common areas were to be cleaned in some way by the Tenant to eliminate any smell of residual smoke, and thus void the N5 notice, they were obligated to put the Tenant on notice of this.

12. For these reasons, I find on a balance of probabilities, the Tenant voided the N5 notice in accordance with section 64(3) of the Act. As a result, the Landlord's application must be dismissed.
13. Even if I am wrong, and the Tenant was required to clean the common areas, I do not find the odour of residual smoke in the hallway amounts to substantial interference with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant. I can appreciate that the smell, while it dissipates, may be a momentary irritation to others as they traverse the common area hallway. However, I do not find this irritation alone rises to the level of substantial interference.

It is ordered that:

1. The Landlord's application is dismissed.

May 30, 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.