



I hereby certify this is a true copy of an Order dated
JAN 08, 2024
Landlord and Tenant Board

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

Citation: Fernandez v Dufresne, 2024 ONLTB 556

Date: 2024-01-08

File Number: LTB-L-067621-23

In the matter of: 1, 143 GREENWOOD AVE
NORTH BAY ON P1B5E8

Between: Stephen James Fernandez Landlord

And

Kaleigh Jessie Dufresne Tenants
Robert Kenneth John Porter

Stephen James Fernandez (the 'Landlord') applied for an order to terminate the tenancy and evict Kaleigh Jessie Dufresne and Robert Kenneth John Porter (the 'Tenants') because:

- the Tenants or another occupant of the rental unit has committed an illegal act or has carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential complex involving the production of an illegal drug, the trafficking in an illegal drug or the possession of an illegal drug for the purposes of trafficking;
- the Tenants or another occupant of the rental unit has committed an illegal act or has carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential complex.

The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on November 7, 2023.

Only the Landlord attended the hearing.

As of 11:22am, the Tenants were 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. Furthermore, the Board did not receive any evidence that the Tenants did not receive the notice of hearing, sent on September 21, 2023, or by mail on September 26, 2023. I am also satisfied that the Landlord served any evidence for the hearing to the Tenants at least seven days prior to the hearing by serving it to the Tenants' mailbox rental unit.

Therefore, I am satisfied that the Tenants were given notice of this hearing in accordance with this Act. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the Tenancy between the Landlord and the Tenants shall be terminated on January 13, 2023.
2. The Tenants were in possession of the rental unit on the date the application was filed.
3. On August 28, 2023, the Landlord served the Tenants an N6 notice of termination. The notice of termination alleges that the Landlord discovered that the Tenants had been arrested for possession of a restricted firearm, possession of fentanyl for the purpose of trafficking, and manufacturing handguns in the rental unit with a 3D printer.
4. The Landlord testified that he discovered, via a news story on a local media news outlet, that the police had raided the rental unit and arrested the Tenants. Photos from that news outlet confirmed that the arrest occurred at the rental unit.
5. The Landlord presented evidence from the "North Bay Police" social media page detailing the arrest, including the fact that the Tenants used a 3D Printer to manufacture handguns. The Landlord recognized that the pictures from the police social media page were taken in the rental unit, including the 3D printer used to manufacture firearms.
6. The Landlord obtained a photocopy of the Arrest Information from the North Bay Ontario Court of Justice which showed that the Tenants were arrested and had 12 charges laid against them, including possession of fentanyl for the purpose of trafficking, which is a violation of section 5(2) of the *Controlled Drugs and Substances Act*, and several counts of possession of a loaded firearm without holding a licence or registration, which is contrary to 95(1) of the Criminal Code.
7. The Landlord testified that the Tenants may be currently incarcerated, however someone is attending the rental unit on occasion. The Landlord is unsure if it is a family member entering the unit to pick up personal items and mail. The Landlord does not believe the Tenants have returned to the unit since their arrests in August 2023.
8. The Landlord testified that the Tenants have not paid rent since August 2023.
9. Section 61(1) of the *Residential Tenancies Act*, 2006 (the 'Act') states:

61 (1) A landlord may give a tenant notice of termination of the tenancy if the tenant or another occupant of the rental unit commits an illegal act or carries on an illegal trade, business or occupation or permits a person to do so in the rental unit or the residential complex.

10. Section 61(2) of the Act states:

(2) A notice of termination under this section shall set out the grounds for termination and shall provide a termination date not earlier than,

(a) the 10th day after the notice is given, in the case of a notice grounded on an illegal act, trade, business or occupation involving,

(i) the production of an illegal drug,

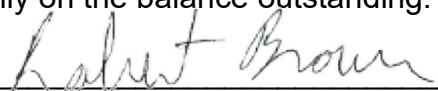
- (ii) the trafficking in an illegal drug, or
- (iii) the possession of an illegal drug for the purposes of trafficking;

11. Based on the uncontested evidence before me, I am satisfied that the Tenants have committed an illegal act or has carried out, an illegal trade, business or occupation in the rental unit or the residential complex involving the production of an illegal drug, the trafficking in an illegal drug or the possession of an illegal drug for the purposes of trafficking.
12. The Tenant was required to pay the Landlord \$3,041.10 in daily compensation for use and occupation of the rental unit for the period from September 19, 2023, to November 7, 2023.
13. Based on the Monthly rent, the daily compensation is \$60.82. This amount is calculated as follows: \$1,850.00 x 12, divided by 365 days.
14. There is no last month's rent deposit.
15. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenants must move out of the rental unit on or before January 13, 2024.
2. If the unit is not vacated on or before January 13, 2024, then starting January 14, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after January 14, 2024. The Sherriff is requested to expedite the enforcement of this order.
4. The Tenants shall pay to the Landlord \$3,041.10, which represents compensation for the use of the unit from September 19, 2023, to November 7, 2023.
5. The Tenants shall also pay the Landlord compensation of \$60.82 per day for the use of the unit starting November 8, 2023, until the date the Tenant moves out of the unit.
6. The total amount the Tenants owe the Landlord is \$3,041.10.
7. If the Tenants do not pay the Landlord the full amount owing on or before January 13, 2024, the Tenants will start to owe interest. This will be simple interest calculated from January 14, 2024, at 7.00% annually on the balance outstanding.

January 8, 2024
Date Issued



Robert Brown
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,
Toronto ON M7A 2G6

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

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on July 14, 2024 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.