



I hereby certify this is a true copy of an Order dated  
**JAN 11, 2024**  
*Robert Brown*  
Landlord and Tenant Board

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

**Citation:** 2398351 Ontario Limited, KLM Properties v Gooding, 2024 ONLTB 2860

**Date:** 2024-01-11

**File Number:** LTB-L-020937-23

**In the matter of:** A, 619 Queen St E  
St. Marys, ON N4X1A6

**Between:** 2398351 Ontario Limited Landlord  
KLM Properties

**And**

Tabitha Gooding Tenant

2398351 Ontario Limited and KLM Properties (the 'Landlord') applied for an order to terminate the tenancy and evict Tabitha Gooding (the 'Tenant') because 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.

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

The Landlord's Representative, Gwendolen Boyle, the Landlord's Agents, Geoff Loucks, and Scott McIntosh, the Landlord's witness, Lisa Thomson, 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. On February 9, 2023, the Landlord served the Tenant an N7 notice of termination. The notice of termination contains the following allegations:
  - The Tenant assaulted another resident of the rental complex on August 7, 2022
  - The Tenant had loud outbursts when fighting inside her rental unit on November 2, and 5, 2022, and
  - Allowed dog feces to fall from the Tenant's balcony down into a neighbour's balcony.
4. The N7 indicated that "Reason 1- Serious Impairment of Safety" was a reason that a notice to terminate was issued to the Tenant.

5. The N7 had also checked off "Reason 4" which states that the Landlord lives in the same rental complex as the Tenant and that the complex has 3 or less rental units total, and that substantial interference with the Landlord's reasonable enjoyment and lawful rights and privileges of the rental unit.
6. Noting that both names of the Landlords are for corporations or businesses, the Board sought submissions from the parties to confirm if either of the named Landlords did reside in the rental unit.
7. The Landlord stated that this box had been checked off in error, and that neither of the named Landlords, or their employees, lived in the rental complex.
8. Based on the evidence before me, I find that Reason 4 was not a valid reason for terminating the tenancy. Therefore, the only valid reason stated on the N7 is "Reason 1- Serious Impairment of Safety".
9. Based on this revelation, the Board will only consider the issues dealing with impairment of safety. I find that although the claim of yelling in the Tenant's own rental unit and the issue with dog feces may substantially interfere with the reasonable enjoyment of the Landlord or other tenants in the rental complex, these are not safety issues, but are issues that should have been addressed on an N5 notice.
10. Therefore, out of the three claims made on the N7, only the alleged fight that occurred on August 7, 2022, will be considered at this hearing.

Evidence- Lisa Thomson

11. The Landlord's Witness, Lisa Thomson (LT), is a resident in the rental complex, and a neighbour to the Tenant.
12. LT testified that on August 7, 2022, she had returned home from a trip and had just put two young children to bed. LT stated that the doorbell rang and at the door was the Tenant.
13. LT testified that the Tenant yelled at her to "Go get your fucking cat from the backyard now or I'm calling the police!"
14. LT testified that her 11-year-old granddaughter came from another rental unit beneath LT's. LT testified that the Tenant turned around and punched JT's granddaughter. LT then stated that the Tenant's boyfriend came from the Tenant's unit and broke up the fight.
15. LT stated that the fight caused her granddaughter to bleed from the mouth.
16. LT stated that a peace bond was issued for the Tenant to stay away from LT and her family. A copy of the peace bond was not presented at the hearing.
17. LT testified that her granddaughter has suffered from anxiety since the assault occurred.
18. LT did not submit any medical documentation or other evidence that would substantiate any of the injuries suffered due to the altercation.

Evidence- Geoff Loucks

19. The Landlord's Agent, Geoff Loucks (GL), is an employee of the Landlords.

20. GL testified that he was notified of the fight shortly after the fight occurred. The Landlord testified that he attempted to mediate a settlement between the two tenants in an effort to keep the peace.
21. GL also testified that he contacted the support team for the housing program that the Tenant is participating in.
22. GL acknowledged that there was a substantial time from when the alleged assault occurred and when the N7 was served on the Tenant on February 9, 2023, but stated the gap was because he was hopeful that the social services whose assistance he was seeking would be able to resolve this issue, either through mediation or relocating the Tenant to another rental unit at another rental complex which also participates in the housing program which the Tenant is participating in.

#### Evidence- Tenant

23. The Tenant testified that LT has cats outside. The Tenant stated that she was upset about the treatment of the cats, however she did not elaborate at the hearing what she was specifically upset about regarding the cats.
24. The Tenant did not deny going to LT's door on August 7, 2022.
25. The Tenant's recollection of the events differs from LT's testimony. The Tenant stated that when the Tenant confronted LT at her door, LT referred to her as a "crack whore". The Tenant stated that LT's granddaughter attacked the Tenant first, punching the Tenant which connected with the Tenant's face, and breaking her nose.
26. The Tenant testified that in the end, the Tenant had a concussion, and scratched eye in addition to the broken nose.
27. The Tenant testified that during the fight, LT was encouraging her granddaughter to continue the assault.
28. The Tenant stated that it was her 12-year-old son who came and pulled the Tenant into her rental unit. The Tenant, under cross-examination, denied that it was her boyfriend who pulled her into the rental unit, and that the relationship with the now ex-boyfriend had ended months earlier.
29. The Tenant gave an account of having to attend the local hospital and was treated by a doctor in the area.
30. The Tenant provided no medical documents to substantiate her injuries or her treatment at the hospital.
31. The Tenant testified that GL never did contact her or attempt to mediate a settlement between herself and LT.
32. The Tenant testified that although the police were called, no charges were laid.

#### Analysis

33. Section 66 of the Residential Tenancies Act, 2006 (the 'Act') states:

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

(a) an act or omission of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant seriously impairs or has seriously impaired the safety of any person; and

(b) the act or omission occurs in the residential complex. 2006, c. 17, s. 66 (1).

Same

(2) A notice of termination under this section shall provide a termination date not earlier than the 10th day after the notice is given and shall set out the grounds for termination.

34. The impairment of safety in this claim revolves around a fight between the Tenant and LT that occurred on August 7, 2022.
35. The parties either agree, or at least, do not contest the following:
- The Tenant came to LT's door in the evening on August 7, 2022.
  - A physical altercation between the Tenant and LT's granddaughter took place.
  - The Tenant was removed from the fight by a male.
  - The Landlord did not serve a notice to terminate the tenancy based on this altercation until 6-months after the incident occurred.
36. The standard of proof before this tribunal is a "balance of probabilities." Furthermore, the burden of proof rests on the applicant, not the respondent. In this case, the burden of proof is on the Landlords to prove that the Tenant impaired the safety of either the Landlords or another tenant at the rental complex.
37. Based on the evidence before me, I am not satisfied, on a balance of probabilities, that the Tenant impaired the safety of anyone at the rental complex.
38. I am persuaded to believe that this was not a serious impairment of safety for two reasons: the police's failure to charge anyone with assault or any other crime when this incident occurred, and the fact that the Landlords were of the opinion that this matter could be resolved without involving the Board for six months before acting on this incident.
39. Based on this evidence, I find that neither the police nor the Landlords found this incident to be a serious impairment of anyone's safety. If this had been perceived as a serious matter by either the Landlords or the police, I believe the Landlords would have served this N7 within days of this incident, and not half of a year after the fact, or the police would have been more involved than what they were.
40. What I am left with is the testimonies of Ms. Thomson and the Tenant. I have no doubt that each person perceived what they testified about, and I have no reason to believe either person has said anything false. However, neither of the injuries claimed to have occurred by either party were substantiated at the hearing, so there was nothing to tip the scales in the favour of either party. In other words, I am left with two views of what occurred without


either party challenging the other side's evidence enough for me to be persuaded by one side over the other.

41. This leaves me with the question: did the Tenant intend to get into a physical altercation/fight with LT or LT's granddaughter and this seriously impair another tenant's safety, or did LT's granddaughter start the fight with the Tenant? Based on the evidence presented at the hearing by both sides, I cannot be satisfied, on a balance of probabilities, who started the actual fight that potentially caused a serious impairment of safety.
42. For the Board to issue an order to terminate a tenancy, the Board has to be satisfied that, on a balance of probabilities, a tenant seriously impaired the safety of a landlord or other tenants at the rental complex. I find that, based on the evidence before me, the Landlord has failed to prove that the Tenant seriously impaired the safety of either the other residents of the rental complex, or the Landlord on August 7, 2022.
43. Therefore, the Landlord's application is dismissed.

**It is ordered that:**

1. The Landlords' application is dismissed.

**January 11, 2024**  
**Date Issued**

  
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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.