



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

Citation: Somnarain v Loker, 2023 ONLTB 80683

Date: 2023-12-13

File Number: LTB-L-024176-23

In the matter of: 4, 1534 BARTON ST E
HAMILTON ON L8H2X6

Between: Anan Somnarain

And

Howard Loker
Tiffany Jadwiczak

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

DEC 13, 2023

Landlord and Tenant Board

Landlord

Tenants

Anan Somnarain (the 'Landlord') applied for an order to terminate the tenancy and evict Howard Loker and Tiffany Jadwiczak (the 'Tenants') because:

- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another Tenants;
- the Tenants, another occupant of the rental unit or a person the Tenants permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex;
- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully caused undue damage to the premises.

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 28, 2023.

Only the Landlord attended the hearing.

As of 1:31 p.m., 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. 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 with respect to the N7 notice of termination that was given to the Tenants, and the claim for compensation in the application.
2. The Tenants were in possession of the rental unit on the date the application was filed.

N5 Notice of Termination

3. On February 16, 2023, the Landlord gave the Tenants an N5 notice of termination ('N5 notice'). The termination date in the N5 notice was March 3, 2023. This means that the N5 notice was given to the Tenant on 15 days' notice.
4. The N5 notice was given to the Tenant under section 64 of the Act. Under subsection 64(2) of the Act, such a notice must be given with at least 20 days' notice. Because the N5 notice provided the Tenants with less than the required 20 days' notice, it is invalid.
5. The Landlord's application is dismissed as it relates to the N5 notice.

N7 Notice of Termination

6. On March 11, 2023, the Landlord gave the Tenants an N7 notice of termination ('N7 notice'). The N7 notice alleges that other tenants have complained about cockroaches in the residential complex, which come from garbage the Tenant has left outside the rental unit and refuses to remove; that on March 8, 2023, the Landlord asked the Tenant to stop creating excessive noise in the rental unit after other tenants complained, and the Tenant responded with verbally abusive behaviour; and on March 11, 2023, after the Landlord asked the Tenant to remove the garbage from outside the unit, the Tenant punched the Landlord in the face four times.
7. The Landlord said that on March 11, 2023 at 2:50 p.m. he was clearing snow around the residential complex. He said he could not clear snow near the rental unit because the Tenants had left garbage there, which the Landlord had previously requested the Tenants to remove.
8. The Landlord asked the Tenant, Howard Loker ('HL'), to remove the garbage again. HL responded by punching the Landlord in the face. The Landlord said he sustained an injury to his eye, and went to the hospital. He said that he also called police.
9. The Landlord entered as evidence of photo of himself that he said was taken on March 11, 2023 and shows the injury to his face. The photo shows significant bruising around the Landlord's right eye, and his right eye appears to be swollen shut.
10. The Landlord said that around July 12, 2023, HL told him that if he comes into the rental unit, he will punch the Landlord again.
11. The Landlord said he is afraid of going to the rental unit after being punched, and there are other ongoing issues with the tenancy. I accept the Landlord's evidence on this point, and I find that the Landlord's ability to safely and effectively address other issues with respect to this tenancy is confounded by HL's conduct.
12. A serious impairment of safety for the purposes of section 66 of the Act includes both actual impairment and a real risk of impairment. The notice period for an N7 notice is short (10 days) and the Act does not provide for a cure period, as it does for example for notices given under section 64. The process under section 66 of the Act is reserved for "weighty, grave, or momentous" conduct: *2276761 Ontario Inc. v. Overall*, 2018 ONSC 3264, para 12.

13. I find that HL punching the Landlord in the face as described above was weighty, grave, or momentous conduct. Violence between a landlord and tenant is not acceptable. The Tenant's intentional and violent conduct seriously impaired the Landlord's safety, and caused him to suffer injuries. This conduct occurred in the residential complex.
14. The Tenants were required to pay the Landlord \$7,454.58 in daily compensation for use and occupation of the rental unit for the period from March 24, 2023 to November 28, 2023.
15. Based on the Monthly rent, the daily compensation is \$29.82. This amount is calculated as follows: \$907.00 x 12, divided by 365 days.
16. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
17. The Landlord collected a rent deposit of \$875.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$38.24 is owing to the Tenants for the period from March 1, 2022 to November 28, 2023.
18. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.
19. The Landlord said the Tenants live in the rental unit without any children, and he was not aware of any circumstances of the Tenants that should be considered with respect to whether eviction should be delayed or denied.
20. 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 Tenants is terminated. The Tenants must move out of the rental unit on or before January 3, 2024.
2. If the unit is not vacated on or before January 3, 2024, then starting January 4, 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 4, 2024. The Sheriff is requested to expedite the enforcement of this order.
4. The Tenants shall pay to the Landlord \$7,454.58, which represents compensation for the use of the unit from March 24, 2023 to November 28, 2023. Any amount the Tenants have paid the Landlord for rent for this period shall be deducted from the amount owing.
5. The Tenants shall also pay the Landlord compensation of \$29.82 per day for the use of the unit starting November 29, 2023 until the date the Tenants moves out of the unit.
6. The Tenants shall also pay to the Landlord \$186.00 for the cost of filing the application.

7. The Landlord owes the Tenants \$913.24 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Tenants.
8. The Landlord or the Tenants shall pay to the other any sum of money that is owed as a result of this order.

December 13, 2023
Date Issued

Mark Melchers
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 Tenants expires on July 4, 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.