



Order under Section 69
Residential Tenancies Act, 2006

File Number: TNL-35993-21

In the matter of: BASEMENT, 38 CASA NOVA DRIVE
WOODBIDGE, ON L4H 2Z9

Between: Annette D'Angelo

and

Bryan Dahmer

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

May 27, 2022

Landlord and Tenant Board

Landlord

Tenant

Annette D'Angelo (the 'Landlord') applied in this L2 application for an order to terminate the tenancy and evict Bryan Dahmer (the 'Tenant'), based on the Landlord's claims in a N7 Notice of Termination (the 'N7 Notice') that the Tenant or someone visiting or living with him:

- seriously impaired the safety of another person and the behaviour occurred in the residential complex;
- wilfully damaged the rental unit or residential complex; and
- substantially interfered with the reasonable enjoyment or lawful rights, privileges or interests of the Landlord, as they live in the same building which has 3 or fewer residential units.

This L2 application was heard by telephone/video-conference on April 20, 2022. The Landlord and her legal representative Dan Schofield ('DS') attended the hearing. The Tenant and his legal representative Joseph Baldassarre ('JB') also attended the hearing.

Determinations:

Preliminary Issue – N7 Notice of Termination Not Defective

1. JB submitted the N7 Notice of Termination was defective on its face for 2 reasons, and as a result the L2 application should be dismissed before holding a merits hearing.
2. The first reason was that the Landlord's surname "D'Angelo" on the N7 does not match "Pipitone" in the lease agreement.
3. I was satisfied there was no defect in the N7 with respect to the Landlord's surname since the parties agreed they live in the same house and there was no confusion to the Tenant who his Landlord was giving him the notice of termination. The lease agreement was signed several years ago (September 21, 2017) during

which time parties could have changed their name or used other names such as their maiden name. As per section 212 of the *Residential Tenancies Act, 2006* (the 'Act'), "*substantial compliance with this Act respecting the contents of forms, notices or documents is sufficient*".

4. JB also submitted as the second reason for dismissal, that the N7 Schedule A was defective in providing adequate particulars, reasons why the Tenant was being evicted, or what the Tenant could do to remedy the situation. I shared JB's concern that some of the paragraphs in Schedule A did not set out any allegations at all, contained details which were irrelevant to a N7 Notice, or had provisions which were contrary to the Act.
5. DS admitted Schedule A may be verbose, but there was nothing contained within it which was hard to read or understand. DS admitted that some details in the Schedule A were contrary to the Act as the Landlord prepared it herself and had a different legal representative in the past. He proposed that the Landlord would strike various paragraphs from Schedule A and specifically keep only the following paragraphs which would remain in issue for this application: 8, 10, 12, 13, 15, 18, and 21 [collectively referred to as the 'N7 Claims' in this hearing Order].
6. **I found the paragraphs containing the N7 Claims to be sufficiently clear and understandable.** They contained enough details to satisfy the test for adequate particulars in *Ball v. Metro Capital Property [2002] O.J. No. 5931 (Divisional Court)*. As a result, the application hearing proceeded on the basis of the N7 Claims only.

Preliminary Issue – Some Amendments to L2 Application Allowed

7. The Landlord submitted a written request to amend her L2 application on January 8, 2022. I was satisfied that Rule 15 of the Board's Rules of Procedure were followed. She wanted to add Schedule B to the application.
8. **I did not allow any parts of Schedule B which sought to amend Schedule A of the N7 Notice. Similarly, I did not allow any additional claims such as the Tenant's sister blocking the Landlord's parking/access or police intervention (in addition to being in Schedule B, these types of harassment claims were contained at paragraphs 41 (b) and (c) of a N5 Notice served in January, 2022; the N5 did not form a basis for this L2 application). The N7 Notice of Termination cannot be amended in this manner and should have contained all necessary particulars at the time it was served on the Tenant before the Landlord filed this L2 application.**
9. **I allowed only the portions of Schedule B which sought to enlarge the remedies claimed (ie: general damages for Landlord's mental health, remedies for lease breaches, harassment, and police involvement arising after the L2 application was filed).**

All Claims Analyzed Under All Reasons for N7

10. When I asked for the N7 Claims to be better organized for the hearing, DS submitted that many of the N7 Claims overlap into more than one reason for termination (Reason 1: serious impairment of safety; Reason 2: wilful damage; Reason 3: substantial interference). Since all N7 Claims were submitted under all 3 reasons (on page 1 of the N7 Notice), I analyzed them under each test and reason.

The Issues/Claims Arising from the N7 Notice of Termination

11. This L2 application seeking termination of tenancy, various monetary remedies, and an eviction order, is based on a N7 Notice of Termination. I was satisfied the N7 Notice complied with the Act (at least 10 days provided for termination of tenancy; properly served). As described in paragraph 5 above, Schedule A to the N7 Notice was reduced to particular N7 Claims only. Specifically, the Landlord made the following complaints about the Tenant's behaviour:

- LACK OF CLEANLINESS – grease, dirt, food debris in the kitchen; items piled around furnace and electrical breaker panel area; dirty dishes, empty water jugs and beer bottles, dryer lint, garbage in laundry room, garbage smell in house, sticky and dirty floors, laundry tub black with dirt; dirty stove fan; fruit flies; dirty toilet and bathroom floor; dust everywhere; failure to pickup or prepare unit for professional cleaners; lack of vacuuming or cleaning floors; nothing rectified at follow-up inspection
- SAFETY RISKS – sporting equipment and belongings piled around furnace and electrical breaker panel areas; bike stored on hardwood stairs obstructing fire route and access to rental unit; food debris and grease/dirt around oven and stove, dryer lint; alarm going off for days while Tenant was away; failure to alert about absence/vacation
- DAMAGE – bike damage to hardwood steps; damage to laundry tub from missing leg and mould; damage to central vac motor from vacuuming up a sock

[Note: DS submitted that the claims made in paragraph 21 of Schedule A (Tenant demanded to be present or have his girlfriend present for any entries) and Schedule B of the amended L2 application (denied entries, police involvement, escalating incidents that occurred after the filing of the L2 application) spoke more towards section 83 submissions.]

The Evidence Regarding Lack of Cleanliness

12. The Landlord made numerous complaints about the Tenant's overall lack of cleanliness. Many photos were submitted and she testified she had seen it with

her own eyes on several occasions (including but not limited to the following dates when she entered the rental unit: February 26, 2021, August 21, 2021, September 2, 2021, October 28, 2021, and November 4, 2021).

13. The Landlord testified she saw many shocking examples of dirt and filth in the rental unit such as grease, dirt or food debris in the kitchen (on the stove, in the oven, on the floor especially beside the stove/oven), dirty dishes piled everywhere, dust everywhere, fruit fly infestation on dirty beverage containers and dishes, rotting food in the fridge, dryer lint spilling out of the lint tray and hanging off the door, coins and dust on an around the laundry machines, dirty floors throughout the rental unit, rotting garbage in the laundry room and piled in garbage/recycling bins for long periods without being taken out, and dirty bathroom including mould, dirt on the floor, damaged and dirty tiles, and filthy toilet. She also noticed foul smells from rotting garbage through the whole house during the whole tenancy.
14. The Landlord testified she was especially aggrieved because she had arranged for professional cleaning and had even ordered extra cleaning on August 21, 2021. The cleaners arrived on September 2, 2021. They did a thorough job, took over 6 hours, and they left the place immaculate.
15. The Landlord testified that she was then shocked that only 2 months later on November 4, 2021 at a follow-up inspection, she saw that the Tenant had deteriorated and failed to keep the place clean. She again found excessive dryer lint, rotting food, garbage left inside rental unit, fruit fly infestation, and many other signs that the Tenant had made the place very dirty again in such a short period of time.
16. The Landlord submitted an inspection report done by NV Property Management on March 31, 2022 and signed on April 2, 2022. She testified that the report corroborated how dirty the rental unit was and that the Tenant had not rectified anything. The report also stated various areas were damaged or dirty and that there were several fire risks. Nobody from NV Property Management (such as the author of the inspection report) were summonsed to be a witness.
17. The Landlord testified that the Tenant's lack of ordinary cleanliness was a breach of their residential lease agreement, which substantially interfered with her.
18. The Tenant testified that he had Crohn's disease and other health complications arising from his diagnosis. He also had achilles tendinitis which made it painful and nearly impossible to walk when it flared up. He admitted that for some short durations between November 2021 to January 2022 he was hospitalized and had limited ability to clean even when he was home.
19. The Tenant testified that he made normal efforts to keep the rental unit in a state of ordinary cleanliness. He admitted that there were some signs of debris and dirt but that nothing was excessively dirty – they were just not up to the standards

expected by the Landlord. The toilet was admittedly dirty, **but he submitted that was an effect of Crohn's disease.** He explained that the Landlord chose to hire professional cleaners on her own accord. He submitted that the Landlord told him to put garbage in the laundry room until garbage day, which was in fact what he had been doing for 4 years. He submitted that he did not always know what the Landlord expected of him (for example when she made complaints about his toilet she said it was wobbly). He did not know why his Landlord would expect a perfectly clean dryer lint tray when his testimony was that her pictures were taken the day after he had done a full load of towels and had not yet had a chance to collect the lint. He testified that he always removed lint since he knew it was a fire risk. In summary, **he testified that he made ordinary efforts to keep the place as tidy as any normal guy would.**

The Evidence Regarding Safety Risks

20. The Landlord testified that she had witnessed numerous fire safety risks in the rental unit. She had seen the Tenant's items piled around the furnace and electrical breaker panel, excessive lint "pouring out" from the dryer on the door and overflowing on the lint tray (dryer is close to the electrical panel), the Tenant's bike being stored for months on the hardwood step blocking a door to the unit, food/crumbs/grease on the bottom of the oven and around the stove, and that she was frightened by an alarm that was going off while the Tenant was travelling.
21. Numerous pictures were submitted by the Landlord showing the various alleged safety risks all over the rental unit.
22. The Landlord admitted that although the bike was heavy, she was able to maneuver around it to access the unit. She also admitted that although the bike was stored where she deemed a "common area" of the house, the bike did not obstruct the other entrances and exits she could use for her own unit. She admitted she was not prevented outright from entering the Tenant's unit on any emergency entry due to the bike.
23. The Tenant denied that any fire safety risks had occurred in the rental unit due to his behaviour or omission. He reiterated that he always removed lint but the Landlord's inspection and pictures had occurred right after he had run a full load of towels which he had not cleaned yet. The Tenant admitted to leaving his bike on the stairs for a time but denied the alleged damage to the hardwood step could have been caused by his bike tire – rather it was the rectangular piece of carpet tile the Landlord had put on the stairs and friction over a long period of time (house was approximately 18 years old) which likely caused the damage. **The Tenant admitted there was grease and crumbs in the kitchen but it was normal. He also described a computer alarm may have been going off in his unit but it had nothing to do with any appliance or safety reason.**

24. **The Tenant admitted to going to Iceland and being in hospital at various times without notifying the Landlord or arranging for someone to mind the rental unit in his absence.**

The Evidence Regarding Undue Damage

25. The Landlord testified that the Tenant had caused undue damage to the rental unit including damage to the bathroom tiles, mould and dirt in the tub, damage to the central vacuum motor from sucking up a sock, and damage to replace 4 hardwood steps (to match the 1 step that was worn through the varnish/wood by the Tenant's bike). The Landlord submitted numerous pictures to show these damages.
26. The Landlord also testified that a sock which the Tenant had failed to pickup to prepare for professional cleaning, had been sucked up by the central vacuum and burnt the motor.
27. **The Tenant denied causing any undue damage to the rental unit. Instead, he submitted that the age of the house and the fact that appliances, tiles, caulking, grout etc. had not been renovated and that they got dirty or worn over time explained the Landlord's complaints. He denied causing any damage willfully. He submitted the professional cleaning was done by the Landlord on her own and he should not be liable for any damage done during the cleaning.**

Analysis

Substantial Interference

28. On a balance of probabilities, considering all the evidence presented by the parties, **I do not find that there was substantial interference with the Landlord's reasonable enjoyment, rights, interests or privileges.**

Section 65(1) of the Act states: *"Despite section 64, a landlord who resides in a building containing not more than three residential units may give a tenant of a rental unit in the building notice of termination of the tenancy that provides a termination date not earlier than the 10th day after the notice is given if the conduct of the tenant, another occupant of the rental unit or a person permitted in the building by the tenant is such that it substantially interferes with the reasonable enjoyment of the building for all usual purposes by the landlord or substantially interferes with another lawful right, privilege or interest of the landlord."*

29. **To me, none of the Landlord's pictures, videos, or documents showed anything other than ordinary cleanliness, or normal wear and tear.** There were at least 170 TABS submitted by the Landlord, many of which were not referenced during the hearing. All of the TABS submitted as evidence during the hearing will not be analyzed here, but suffice it to mention a few examples:

- Tab 55 – The Landlord submitted that this photo showed food was left out, attracting fruit flies and other insects. This photo shows a red onion and a sweet potato stored in a produce/fruit basket and some garlic in a ramekin on the kitchen counter. No insects were present. This shows normal food storage of produce at room temperature.
 - Tab 93 – The Landlord submitted that this photo showed clutter and fire exit obstruction. I disagree that there is clutter or danger of any kind. The window (fire exit) is not obstructed in any way although there is a mattress leaning sideways against the wall under the window. The mattress can be moved or climbed over if required. There are some personal items such as clothes on a folding chair, a duffel bag, and a suitcase, but nothing at all showing a mess or a safety hazard. The electric panel is not obstructed in any way.
 - Tab 94 – The Landlord submitted that this photo showed rotting food in the fridge which stank up the house. This picture does show an old pizza box, several plastic beverage containers, one stain in the right produce drawer, and some old produce in a Ziploc-type plastic bag in the left drawer. This looks completely typical of any person's fridge, especially if one has forgotten to throw away items before going away. The produce may be old but I am not convinced there were such stains or rotting occurring to permeate foul smells to the rest of the house or to dirty the fridge to any considerable extent.
 - Tab 98 – The Landlord submitted this photo to show splatter in the toilet and under the toilet seat. **Although this toilet requires cleaning, the Tenant has Crohn's disease and admitted to being unable to clean as often or thoroughly during periods of flareup of his Crohn's or achilles issues.**
30. **To warrant eviction, the Landlord must prove the Tenant's behaviour substantially interfered with her reasonable enjoyment, rights/interests/privileges. The Act requires the interference to be SUBSTANTIAL. The interference cannot be minor or a mere inconvenience. Against this test, none of the Landlord's evidence convinces me that the Tenant was so unclean or untidy that it caused a substantial interference to her.**
31. I considered the inspection report from NV Property Management but gave it little weight since the author of the inspection did not testify to interpret their findings and notes nor to open themselves to cross examination.
32. I did not find the Landlord's claims of garbage smells stinking up the whole house to be credible. The pictures and testimony did reveal some old food might have been left in the fridge, and some garbage and recycling was left inside the rental unit, but there was not enough to cause extended periods of foul smell to emanate through the whole house.

33. The fruit flies may have been a nuisance, but I did not see any compelling evidence from the photos or video that any “infestation” or swarm of flies had spread up into her unit of the house. The Tenant testified that he tried to rectify the problem. I accept this was merely a seasonal issue that ordinary residents all deal with when produce is left out in warmer months. There was no evidence to convince me that the fruit flies rose to the level of becoming an “infestation”.
34. I also do not find that the Tenant’s storage of various personal items in and around the basement window and breaker panel, computer alarm going off while he was away, garbage bags left in the laundry room, or bike on the stairs, caused any substantial interference to the Landlord. The storage of the Tenant’s personal items is perfectly consistent with how many people use their unfinished basements. There was no obstruction to any window or breaker panel. The alarm sound and having to maneuver around the bike a few times over a few months may have cause a minor inconvenience but did not cause any substantial interference.
35. The Landlord chose, on her own accord, to hire professional cleaners to get the rental unit up to her subjective standard of cleanliness. Her expectations for cleanliness are obviously much higher than how the Tenant lives. I do not find the Tenant’s behaviour and how he kept the rental unit, were anything other than ordinary cleanliness, consistent with normal everyday residential use by a reasonable tenant. Although there were admittedly food crumbs, dirt and dust on the floors, black corners of grout in the shower etc., none of these showed such uncleanliness that it rose to the level of substantial interference.

Serious Impairment of Safety

36. On a balance of probabilities, considering all the evidence presented by the parties, I do not find that the Tenant’s acts or omissions caused any serious impairment of safety.

Section 66(1) of the Act states: “A landlord may give a tenant a 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.”

37. To warrant an eviction under Section 66, there must be some actual impairment of safety. It is not necessary that anyone actually got hurt or injured, but it is sufficient that it is foreseeable that the act or omission of the Tenant could have resulted in or may result in a serious impairment of safety. The Act specifically requires the impairment of safety to be SERIOUS.
38. Given that a N7 Notice of Termination has serious consequences (for example: landlords can give a shorter notice period compared to other types of notices of

termination; landlords can make an immediate application to the Board; there is no opportunity for tenants to void or correct their behaviour; priority eviction given by Sheriff if expedited eviction is ordered) – this **ground is intended for the most serious and dangerous of situations.**

39. **The Landlord's evidence did not establish that there was any serious impairment of safety.** Although the Landlord claimed food debris near cooking surfaces, lint in the dryer, and obstructions to fire routes, were all serious safety concerns (fire risks), I do not find her evidence supported her claims.
40. **Other than the Landlord's own beliefs that the levels of lint, grease, etc were a significant fire risk, there was no other evidence to prove her supposition,** such as an order from a public authority to declutter, remove combustibles, etc.
41. The crumbs and grease were ordinary amounts for anyone with old kitchen appliances. The lint was also normal for having just run a full load of towels. I accepted the Tenant's evidence that he knows how to remove lint and he does so every time he uses the dryer (he had no chance to do so before the Landlord's pictures and inspections). I do not find the breaker panel or any fire exits were obstructed by any of the Tenant's belongings.
42. **There was no evidence submitted regarding how failure to notify the Landlord about vacations, hospital visits, or other absences posed any serious safety risk. The Landlord admittedly entered the rental unit for various inspections and other emergency visits several times, even during the Tenant's absences.**

Undue Damage

43. On a balance of probabilities, considering all the evidence presented by the parties, I do not find that the Tenant caused any undue damage to the rental unit.

Section 63(1)(a) of the Act states: "A landlord may give a tenant notice of termination of the tenancy if the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential unit, willfully causes undue damage to the rental unit or the residential complex."

44. The alleged damage must be UNDUE damage, beyond what could be considered normal wear and tear. Even if the damage is considered undue damage, the Landlord must lead sufficient evidence to establish that the unit was actually wilfully damaged by the Tenant.
45. I do not find that the Tenant wilfully caused any undue damage in the bathroom. The tiles and tub are old. This house is from approximately 2004 with no evidence that renovations were recently done in the rental unit to upgrade appliances, hardwood, tiles, toilets, fixtures, etc. There were stains and deterioration of grout and caulking, but these were what one would normally expect from an old shower

or tub, especially in the corners. I accept the Tenant's evidence that he tried to clean it several times. The Landlord failed to establish that the Tenant wilfully caused damage to these areas.

46. **The Tenant cannot be held responsible for damage that occurred while he was not there, by professional cleaners who were arranged solely by the Landlord, who sucked up the Tenant's sock.**
47. Similarly, the hardwood step shows signs of wear and tear caused by friction. The wear pattern is identical to the shape of the rectangular carpet square that the Landlord put on the steps. She failed to prove that the Tenant wilfully caused damage here, or that leaving his bike there for a few months caused undue damage.

Claims or Evidence Not Considered

48. **There were other submissions made and evidence led by the Landlord which cannot succeed on this application because they were not properly claimed with adequate particulars in the N7 Claims. This is not an exhaustive list as there were voluminous submissions filed beforehand and during the hearing; but some of the claims not considered for failure to properly disclose in the N7 Notice include: harassment claims, parking or access obstructions, police intervention, and leaving windows unlocked or open.**

It is ordered that:

49. **Since the Landlord did not prove, on a balance of probabilities, that there was any substantial interference, serious impairment of safety, or undue damage, the application is dismissed.**
50. This order contains all my reasons for the determinations made within it and no further reasons shall be given.

May 27, 2022
Date Issued



Michelle Tan
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.