



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

**Citation:** Perth & Stratford Housing Corporation v Kinnear, 2023 ONLTB 22480

**Date:** 2023-05-23

**File Number:** LTB-L-041564-22

**In the matter of:** 9, 62 CAWSTON ST  
STRATFORD ON N5A5N2

**Between:** Perth & Stratford Housing Corporation Landlord

**And**

Rob Kinnear Tenant

Perth & Stratford Housing Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Rob Kinnear (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.

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

This application was heard by videoconference on January 30, 2023.

The Landlord's agent Mathew Lindsay, the Landlord's representative Paula Lombardi, and the Landlord's witnesses, Fire Inspector Andrew Rogerson, Hanna Duncan and Nicole Monsberger attended the hearing.

As of 2:20 p.m., the Tenant was 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 and the claim for compensation in the application. Therefore, the tenancy is terminated effective June 3, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The residential complex is a two-storey building, comprised of 16 residential units. The Tenant resides in unit 9.
4. On July 15, 2022, the Landlord gave the Tenant an N5 notice of termination deemed served on July 15, 2022. The notice of termination contains the following allegations:

- The housing office has received multiple complaints as well as identified incidences of fire safety, over the last few months between May 9, 2022 to July 4, 2022 respectively.
- On May 8, 2022, the Housing office received a call to the after-hours emergency line as water was leaking through into the unit below the Tenant's in the residential complex. An investigation was conducted, it was found that the toilet was overflowing and leaking on to the ground, and that the Tenant had left the oven on at 400 degrees while not in the unit.
- You advised that you left the stove on to light your cigarette and smoke in the unit. Tenant was advised that the stove should never be left unattended while on and should not be used for any purpose other than cooking.
- On May 9, 2022, a Public Housing Review Officer (PHRO) performed an inspection of the of rental unit for damages. PHRO and Tenant had a conversation regarding fire safety issues including why the stove was left on and why you were smoking in the unit, smoking in the unit is prohibited in your lease agreement.
- On May 13, 2022, the housing office received a call from the on-site building monitor that the Tenant's toilet was clogged again and overflowing into the unit. The Tenant had also thrown a bedsheet over the toilet to attempt to stop the water from running into the hallway. The building monitor shut off the water and a plumber was called.
- On May 14, 2022, the housing office received a complaint that at approximately 3:30 PM that the Tenant was running down the hallway on all fours and making a lot of noise. It was also reported that the Tenant proceeded to blast music in the unit that could be heard by other tenants in the building.
- On May 19, 2022, the housing office received a complaint that at approximately 7:00PM the Tenant was knocking on neighbour's door and bothering them after they had asked you not to knock on their door on various occasions. The Tenant was advised that the behaviour was not appropriate and that the level of noise needed to be kept to a minimum and to not bother other tenants in the building.
- On June 2, 2022, the Housing office received a complaint that at approximately 8:30AM, that the Tenant was knocking on a neighbour's door wearing only underwear and asking this tenant to come to the Tenant's unit to do "secret things".
- On June 20, 2022, the Housing office received a call for the on-site building monitor that he had spotted the Tenant with a full gas can trying to enter the building. The on-site building monitor stopped the Tenant and informed that this could not be brought into the building and took it away from the Tenant.
- On July 1, 2022, after-hours emergency line received a report that at approximately 12:51PM the Tenant's smoke alarm was sounding, on-site building monitor went to investigate. A large amount of smoke was observed in your unit and that the smoke

detector was removed, which is a violation of Division B Article 6.3.3.6 of .Reg 213/07 under the Fire Prevention and Protection Act, 1997, S.O. 1997 ch.4.

- Local police and fire personnel were dispatched to and attend the rental unit to inspect and ensure safety of the Tenant and other tenants. The Fire Department had to erect fans to air out the unit due to the amount of smoke and because of smoking cigarettes in the unit. Subsequently, an electrician attended to re-install the smoke detector in the unit.
  - On July 4, 2022, Housing staff, Stratford Police, a worker from the Mobile Crisis Rapid Response Team (MCRRT), and the Fire Prevention Officer attended the unit to conduct a follow-up inspection. During this inspection it was found that the smoke detector was still connected and working but other issues were identified during the inspection:
    - there was a pillow on top of the stove with burn marks on it, being a major fire hazard
    - many cigarette butts around the unit which appeared to have been put out in the bed, as the blanket showed signs of burn marks
    - garbage all over the floor and combustible materials near the baseboard heaters
  - On July 8, 2022, the housing office received a report that in the afternoon that the Tenant was spotted by the building monitor running around in the parking lot exposing himself. Police to met with the Tenant.
5. On May 20, 2022, the PHRO obtained consent form you to speak with your family doctor for her to complete an Independent Living Assessment form. A letter was also included with the assessment outlining the landlord's concerns with your behaviour and the health and safety risks which your actions were causing. The PHRO also attended a follow-up case conference with your community supports to organize a plan to resolve outstanding issues and find solutions to help you live successfully in your housing unit moving forward.
  6. On May 31, 2022, the Housing Maintenance staff entered your unit to install fire stop systems on your vent hood to avoid a fire from spreading should it occur in your oven or on the stovetop.
  7. On July 1, 2022, our after-hours emergency line received a report that at approximately 12:51PM the Tenant's smoke alarm was sounding, on-site building monitor went to investigate. A large amount of smoke was observed in your unit and that the smoke detector was removed, which is a violation of Division B Article 6.3.3.6 of .Reg 213/07 under the Fire Prevention and Protection Act, 1997, S.O. 1997 ch.4.
  8. Local police and fire personnel were dispatched to attend your unit and inspect to ensure your safety and the safety of the other tenants. The Fire Department had to erect fans to air out the unit due to the amount of smoke in the air because of you smoking cigarettes in the unit. Once it was safe to do so, an electrician attended to re-install the smoke detector in the unit.

9. On July 4, 2022, Housing staff, Stratford Police, a worker from the Mobile Crisis Rapid Response Team (MCRRT), and the Fire Prevention Officer attended the unit to conduct a follow-up inspection. During this inspection it was found that the smoke detector was still connected and working but other issues were identified during the inspection; it was observed that you had a pillow on top of your stove with burn marks on it, which is a major fire hazard, as well as many cigarette butts around the unit which appeared to have been put out in your bed, as the blanket showed signs of burn marks. The unit also appeared to have garbage all over the floor and combustible materials near the baseboard heaters. Housing staff and the Fire Prevention Officer confirmed that the baseboard heaters were not operating at the time.
10. Police and MCRRT workers met with you and assessed to make sure you felt safe and other supports were offered to you, but you did not want support at the time of the inspection. You were also reminded that smoking was only permitted outside and not in your unit per your lease agreement.
11. The Tenant was provided the following list of actions to void the N5 notice of termination:
  - a) Refrain from smoking in the residential unit or any common area in the residential
  - b) complex
  - c) Do not remove the smoke alarm at any time whatsoever
  - d) Do not put any combustible materials on the stovetop
  - e) Ensure no items are within 6 inches of the baseboard in you unit
  - f) Bring the unit back into ordinary cleanliness to avoid fire risks.
  - g) Refrain from exposing yourself on Housing property
12. The Tenant did not stop the conduct or activity within seven days after receiving the N5 notice of termination. The rental unit was inspected by the Landlord on August 3, 16, September 27, November 15, 2022 and January 6, 2023. Upon each of these inspection dates the following safety concerns were noted: smoking within a non-smoking unit, careless smoking as evident through an excess of discarded cigarette butts within the living room and bedroom, burn marks on the living room coffee table, burn marks on the mattress/pillow within the bedroom, combustibles on the stove top within the kitchen.
13. It was submitted that during each inspection, the inspector spoke with the Tenant to discuss the safety risk his actions posed on himself and others within the building. During each interaction the Tenant would reply to concerns raised with "no comment". An attempt was made on each inspection to promote fire safety orientation and reduce the risk of a potential fire within the unit.
14. Photos depicting the outcome of the inspections on all of the above noted dates were entered as exhibits, there appears to be a decline in the rental unit condition from the initial inspection date to the last one on record occurring on January 6, 2023. Specifically, the level of clutter, accumulation of garbage within the unit in general, increase in cigarette remnants on the living room floor and overall appearance of unhygienic surroundings.
15. On October 25, 2022, the Fire Inspector Andrew Rogerson of the Stratford Fire Department attended the Tenants rental unit and based on the inspection an order was

issued under section 21(1)(f) of the *Fire Protection and Prevention Act, 1997 to the Tenant*. Specifically, the order outlined the requirement to comply with two specific areas as follow:

**Fire Code Reference:** Ontario Fire Code O. Reg 213/07 as amended – Division B

Disabling prohibited

6.3.3.6. No person shall disable a smoke alarm.

**Reasons:**

Smoke alarm disabled on October 23 2022, Stratford Fire Department Incident Number 22-1925.

**Action Required:**

Smoke alarms shall be maintained in operating condition at all times. Smoke alarms are not to be disabled.

**Reasons:**

Build up of combustibles within close proximity of an ignition source. Stratford Fire Department Incident 22-1925.

**Action Required:**

Stove top to be clear of combustibles.

16. On January 9, 2023, the Fire Inspector Andrew Rogerson of the Stratford Fire Department attended the Tenants rental unit for another inspection, based on the inspection a subsequent order was issued under section 21(1)(f) of the *Fire Protection and Prevention Act, 1997 to the Tenant*. Specifically, the order outlined the requirement to comply with two specific areas as follow:

**Fire Code Reference:** Ontario Fire Code O. Reg 213/07 as amended – Division B

Smoking Prohibited

2.4.3.1. (1) If conditions are such that smoking would create a fire or explosion hazard, smoking shall not take place except in approved smoking areas

**Reasons:**

Cigarettes improperly discarded throughout unit 9.

**Action Required:**

Refrain from smoking within unit 9 if unable to safely dispose of used cigarettes.

17. Both orders resulted in a direction for compliance as follows:

- a. The owner and/or occupant named on page 1 (*the Tenant*) of this Order is responsible for compliance with this Order.
- b. Under section 30 of the Fire Protection and Prevention Act, 1997, a person who fails to comply with an Order is guilty of an offence and, on conviction, is subject to a fine of up to \$20,000 for each day during which the non-compliance continues. A conviction or payment of the fine does not relieve the person from complying with the Order.

18. On January 18, 2023, the fire department was dispatched to the rental complex at 15:16:16 hrs, Fire Suppression and Fire Prevention responded to the report of a smoke alarm activating at 62 Cawston Street, Stratford, Ontario within Unit 9.

19. Fire Inspector Rogerson was assigned to investigate the fire to determine origin and cause. Upon arrival, Fire Suppression crews gained entry into the unit and encountered smoke within the unit. Fire Suppression located a small fire within the unit hallway leading to the bedroom. Fire extinguishers were used to extinguish the fire and pressure ventilation was used to clear smoke from the upper common hallway of the complex and smoke within Unit 9.

20. Fire Inspector Rogerson was able to rule out the introduction of an external ignition source to the area of origin. The Tenant arrived at the residential complex while the investigation was underway, he was unaware and in denial that a fire had occurred within Unit 9.

21. The findings were conclusive; after observing all living spaces within Unit 9 one distinct area of origin within the hallway was identified. The fire within Unit 9 started at the floor level within the hallway beside the bedroom door jamb. Burn patterns along the floor, remnant products of combustion, and the presence of discarded cigarettes led the investigation to this area of origin.

#### *4.1.2 Ignition Source*

22. Remnants of discarded cigarettes were located within the area of origin. The heat generated by a discarded cigarette would create a competent ignition source if in contact with combustible materials (DeHaan and Ilove, 2011). In this case multiple forms of combustibles were located within the area of origin. It was concluded that: the source of ignition had been determined to be a discarded cigarette located at floor level within the hallway of Unit 9.

23. Fire Inspector Andrew Rogerson made submissions at the hearing confirming his attendance at the rental complex and details of the resultant investigation reports as rendered.

24. On the uncontested evidence before me, I am satisfied on the balance of probabilities that the Tenant did not void the N5 notice. Subsection 64(1) of the *Residential Tenancies Act, 2006*, S.O. 2006, c.17 (the 'Act') states:

*A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.*

#### Daily compensation

25. The Tenant was required to pay the Landlord \$729.60 in daily compensation for use and occupation of the rental unit for the period from September 1, 2022 to January 30, 2023.
26. Based on the Monthly rent, the daily compensation is \$4.80. This amount is calculated as follows: \$146.00 x 12, divided by 365 days.
27. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
28. There is no last month's rent deposit.

#### Relief from eviction

29. 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. Despite multiple attempts by the Landlord, staff and fire safety authorities to work with the Tenant in addressing his behaviour and risk prone actions, the Tenant has demonstrated a disregard for his and others safety in the residential complex. Considering the escalation of the issues as arising from the Tenant's actions, a delay from eviction is not appropriate in this instance given the high risk the Tenant presents to other tenants of the residential complex, any further delay could result in unrepairable harm.
30. This order contains all of the reasons for the decision within it. No further reasons shall be issued

#### **It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before June 3, 2023.
2. If the unit is not vacated on or before June 3, 2023, then starting June 4, 2023, 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 June 4, 2023.

4. The Tenant shall pay to the Landlord \$729.60, which represents compensation for the use of the unit from September 1, 2022 to January 30, 2023.
5. The Tenant shall also pay the Landlord compensation of \$4.80 per day for the use of the unit starting January 31, 2023 until the date the Tenant moves out of the unit.
6. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
7. If the Tenant does not pay the Landlord the full amount owing on or before June 3, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 4, 2023 at 6.00% annually on the balance outstanding.

**May 23, 2023**

**Date Issued**

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Alicia Johnson

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 December 4, 2023 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.