



**Order under Section 69 / 89
Residential Tenancies Act, 2006**

Citation: Skyline Living v Cojocar, 2024 ONLTB 16484

Date: 2024-03-11

File Number: LTB-L-042302-23

In the matter of: 707, 101 LANGLOIS AVE WINDSOR
ON N9A6Y2

Between: Skyline Living Landlord

And

Dale Cojocar Tenant

Skyline Living (the 'Landlord') applied for an order to terminate the tenancy and evict Dale Cojocar (the 'Tenant') because the Tenant 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; and 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.

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

The Landlord also applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

This application was heard by videoconference on February 21, 2024.

Only the Landlord's agent Maria Orcajada and the Landlord's witness/resident manager Jasmina Korman attended the hearing.

As of 1:07 p.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. I note that the Tenant had signed into the videoconference at approximately 11:00 a.m. but disconnected from the hearing and was not present when the matter was called upon. 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, and the Tenant owes the Landlord compensation for negligent damage to property.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The Tenant was in possession of the rental unit as of the hearing date.

N6 & N7 Notices of Termination

4. On May 26, 2023, the Landlord gave the Tenant an N6 notice of termination for an illegal act and an N7 notice for serious impairment of safety deemed served on the same day. Both notices have the termination date of June 26, 2023. The notices of termination contain the following identical allegations: 1) That on March 3, 2023 the Tenant sent aggressive and harassing text messages to staff, and 2) That on May 6, 2023 the Tenant was reported as being missing and overdosing by another resident and was subsequently found to have entered the unit of another tenant in the complex, without permission, and was found unconscious and covered in urine and vomit on their bed.

Text messages

5. In the hearing, the Landlord's agent first pointed to the text messages which were sent by the Tenant to one of the building's assistant managers on March 3, 2023. These messages depict the Tenant complaining about the building and stating that "this is the worst apt" and "you are the worst landlord I have ever had" along with several other texts and including one instance of profanity. The recipient of this text message was not present at the hearing, but the Landlord's witness Jasmina Korman confirmed that her colleague had been the recipient of them. On their face, the text messages do not appear to constitute a threat to the safety of any person or display any intention to harm another person. Nor was any larger pattern of text-based harassment outlined by the Landlord's

agent or witness. I am therefore not satisfied that the text messages rise to the level of constituting an illegal act or serious impairment of safety.

Entry into another unit

6. While the Landlord's N6 and N7 notices do not specify what illegal act the Tenant was being accused of, the Landlord's agent made clear in the hearing that the Tenant was being accused of breaking and entering the unit of another tenant on May 6, 2023.
7. The Landlord's agent and the Landlord's witness pointed to a business record and incident report dated May 6, 2023 which was created by an assistant resident manager and which outlined that on this date, the Tenant was first reported as "missing and overdosing on drugs" and was subsequently located inside the bedroom of another building resident. The incident report makes reference to the Tenant having entered this unit without permission, and how the occupants of the unit felt unsafe, were accusing the Tenant of breaking and entering, and that they subsequently called police who arrived with EMT's and escorted the Tenant out. The Landlord's agent stated that this behaviour constitutes an illegal act and serious impairment of safety.
8. The Landlord's witness also clarified that it was her colleague that created the report of May 6, 2023, and that it was her colleague who told her about additional details surrounding the incident including the state that the Tenant was found in, that no theft had occurred, and that the unit door was not locked at the time of his entry.
9. Pursuant to section 348 of the *Criminal Code*, RSC 1985, c. C-46 (the "*Criminal Code*") breaking and entering is defined as the following:

348 (1) Every one who

(a) breaks and enters a place with intent to commit an indictable offence therein,

(b) breaks and enters a place and commits an indictable offence therein, or (c)

breaks out of a place after

(i) committing an indictable offence therein, or

(ii) entering the place with intent to commit an indictable offence therein, is guilty

(d) if the offence is committed in relation to a dwelling-house, of an indictable offence and liable to imprisonment for life, and

(e) if the offence is committed in relation to a place other than a dwelling-house, of an indictable offence and liable to imprisonment for a term not exceeding ten years or of an offence punishable on summary conviction.

10. In relation to this offence, it is important to note that the definition of "break" under this section of the *Criminal Code* does not require that an individual break a point of entry in

order to be found guilty of this offence, as the overarching definition of “break” in section 321 Part IX of the *Criminal Code* includes “to open any thing that is used or intended to be used to close or cover an internal or external opening”. There is also a presumption in section 348(2) of the *Criminal Code* that absent any evidence to the contrary, an individual is presumed to have broke and entered into a place with intent to commit an indictable offence. Therefore, the simple act of opening a door and entering the unit of another resident can fall within the definition of section 348 of the *Criminal Code* regardless of the fact that a theft did not occur. In addition, the seriousness of this incident is of the kind which has an ability to alter the character of the residential complex, since the Tenant’s actions not only infringed upon the privacy of his neighbour, but caused the occupants of the other unit to feel unsafe to the degree that they sought out police intervention. The Tenant was not present in the hearing to point to any evidence which might rebut the presumption outlined in section 348 of the *Criminal Code*. I am therefore satisfied on a balance of probabilities, that the Tenant committed an illegal act pursuant to section 61 of the *Residential Tenancies Act, 2006* (the “Act”) by entering another unit without permission. The content of the N6 notice based on an illegal act has been proven.

11. With respect to whether this same incident constitutes a serious impairment of safety, it is not necessary that actual hurt or injury has been suffered by a person under section 66 of the Act, but only that the outcome or potential outcome of the activity have a substantial negative effect on another person’s well-being or have the risk of same. I note that no one with direct knowledge of this incident was present at the hearing to testify, that is, neither the occupants of the unit who discovered the Tenant, nor the Tenant himself, nor the building manager who created the incident report. The Landlord’s only witness stated that while she had no direct involvement in the incident, the occupants of this unit continue to feel intimidated by the Tenant and unsafe as a result. Given that this testimony constitutes hearsay, it cannot be given the same weight as live testimony by the affected individuals, and thus I am not satisfied that the Landlord has proven the contents of the N7 notice based on hearsay evidence and the incident report alone.

Daily compensation

12. The Landlord claimed daily compensation from the termination date of June 26, 2023 on the N6 and N7 notices. In the hearing, the Landlord’s agent stated that the Tenant was up to date with rent to the period ending February 29, 2024. Given this, the Landlord’s agent sought daily compensation from March 1, 2024 to the date of enforcement of this order, should the tenancy be terminated.
13. Based on the Monthly rent, the daily compensation is \$28.53. This amount is calculated as follows: $\$867.81 \times 12$, divided by 365 days.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. In the hearing, the Landlord’s agent stated that the Landlord collected a rent deposit of \$780.00 from the Tenant and that interest on it had never been paid. The application is thus amended to reflect this. This deposit is still being held by the Landlord. Interest on the

rent deposit, in the amount of \$33.56 is owing to the Tenant for the period from November 26, 2020 to February 21, 2024.

16. In accordance with subsection 106(10) of the Act the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

Compensation for damage

17. The Landlord's claim for damages was brought pursuant to section 89 of the Act for wilful or negligent damage. The application states that on or about March 8, 2023 the Tenant shattered one glass panel on his patio door, and then again on or around March 18, 2023 the Tenant tripped and shattered the second glass panel. The Landlord's agent stated that as a result of these damages the Landlord had to repair the Tenant's patio doors and hired a glass repair company to do so. The Landlord's agent submitted an invoice for repairs into evidence, totalling \$1,363.91 and stated that the Tenant had not repaid the Landlord for this sum.
18. The Landlord's witness stated that she had direct knowledge of the incident on March 8, 2023 and pointed to a picture of one broken panel of glass that she had taken, as well as an incident report that she created in response. The Landlord's witness testified that the Tenant told her that after becoming dizzy he had tripped over his cat litter box and hit the first panel, causing it to shatter. The Landlord's witness also stated that it was her colleague who responded to the incident of March 18, 2023 and that she was told the second panel of glass had shattered as a result of a similar accident.
19. Based on the evidence of the Landlord's witness, the invoice, and the incident report referenced I am satisfied on a balance of probabilities that the Tenant caused negligent damage in the amount of \$1,363.91.

Relief from eviction

20. The Landlord's agent stated that the Tenant's actions as alleged in the N6 and N7 notices form part of a larger pattern of unsettling behaviour on the part of the Tenant and that the Tenant is routinely the subject of general disturbance complaints, noise complaints, police being called to the complex, and that other tenants in the complex feel intimidated by him. When asked if she were aware of any circumstances on the part of the Tenant which would warrant a delay or denial of an eviction, the Landlord's agent stated that she was not, other than being generally aware that the Tenant may be suffering from a substance abuse problem. The Tenant was not present to request relief from eviction, or to testify as to whether there was any particular condition which may have influenced the behaviour outlined on the notices of termination. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The tenancy is terminated in accordance with the N6 notice for illegal act.

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 March 16, 2024.
2. If the unit is not vacated on or before March 16, 2024, then starting March 17, 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 March 17, 2024. The Sheriff is requested to expedite the enforcement of this order.
4. The Tenant shall also pay the Landlord compensation of \$28.53 per day for the use of the unit starting March 1, 2024 until the date the Tenant moves out of the unit.
5. The Tenant shall pay to the Landlord \$1,363.91, which represents the reasonable costs of repairing the damaged property.
6. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
7. The Landlord owes \$813.56 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Tenant.
8. The total amount the Tenant owes the Landlord is \$736.35.
9. If the Tenant does not pay the Landlord the full amount owing on or before March 16, 2024, the Tenant will start to owe interest. This will be simple interest calculated from March 17, 2024 at 7.00% annually on the balance outstanding.

March 11, 2024

Date Issued

Madeline Ntoukas

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 September 17, 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.