



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

Citation: Goncalves v Hadlow, 2024 ONLTB 11925

Date: 2024-02-15

File Number: LTB-L-024198-23

In the matter of: 304, 15 King Street
St. Catharines ON L2R3H1

Between: Maria Goncalves Landlord

And

Samantha Hadlow Tenant

Maria Goncalves (the 'Landlord') applied for an order to terminate the tenancy and evict Samantha Hadlow (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 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 involving the production of an illegal drug, the trafficking in an illegal drug or the possession of an illegal drug for the purposes of trafficking;
- 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 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 January 18, 2024.

The Landlord and the Tenant attended the hearing. Pamela Hadlow attended the hearing as a witness for the Tenant.

Determinations:

1. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the portion of the application to terminate the tenancy is dismissed. The Landlord has proven on a balance of probabilities the grounds for the claim for compensation in the application. Therefore, the Tenant shall pay the Landlord \$753.70.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N5 Notice of Termination

3. The Landlord confirmed that she filed an application with the Board after giving the Tenant a second N5 notice of termination under subsection 68(1) of *the Residential Tenancies Act, 2006* (the 'Act'). The Landlord also confirmed that the materials I had in my possession on the hearing date are all of the materials the Landlord filed with the Board.
4. The Landlord did not file with the Board a copy of the first N5 notice of termination the Landlord gave the Tenant under subsection 64(1) of the Act.
5. Section 53, paragraph 3 of *Ontario Regulation 516/06* ('O.Reg. 516/06') requires a landlord to file with the Board a copy of the first N5 notice and its Certificate of Service, if the landlord files an application to evict a tenant based on a second N5 notice of termination. Subsection 69(1) of the Act also requires a landlord to apply to the Board within 30 days of the date of termination in the notice of termination.
6. In this present case, the Landlord did not file a complete application with the Board, because the Landlord did not file a copy of the first N5 notice and its Certificate of Service. Also, because the date of termination in the second N5 notice is March 30, 2023 – which the second N5 notice led to this application – it is too late for the Landlord to perfect the application. As such, the Board therefore lacks jurisdiction to grant the application based on the N5 notice of termination.
7. For the reasons above, the Landlord's application based on the N5 notice is dismissed.

N7 Notice of Termination

8. On February 5, 2023, the Landlord gave the Tenant an N7 notice of termination with a termination date of March 30, 2023. The notice of termination contains the following allegations: the Tenant and her guests are impairing the safety of other residents as the Tenant is involved in the use and sale of illegal drugs between January 3 to 7, 2023; a guest of the Tenant was naked and loitering and using drugs in the common areas on January 3, 2023; and guests of the Tenant trespassed into an restricted area and broke the ceiling light fixture and triggered the fire alarm on January 7, 2023 at 12:40 a.m.
9. Section 43(2) of the Act provides a notice of termination must set out the reasons and details respecting the termination. The reasons and details a landlord is required to provide under section 43(2) of the Act must give a tenant enough information to know the case

they have to meet and to decide whether to dispute the allegations made against them. [See *Ball v. Metro Capital Property*, [2002] O.J. No. 5931 (Ont. Div. Ct.) at para. 10].

10. On its face, I find the allegation on the N7 notice with respect to January 3 to 7, 2023 does not satisfy the requirements under the Act as it does not set out the dates and times of alleged incidents of drug trafficking or the usage of illegal drugs nor does it specifically set out details about what happened and who was involved on a particular date.
11. The absence of these important details prejudices the Tenant's ability to understand and respond to the Landlord's allegations. I do not accept the Landlord's submission that because she has additional evidence or testimony in support of this allegation and that she satisfied the requirements of the Act. The N7 notice itself must meet the Act's requirements. I was not satisfied that the Tenant understood or was able to properly respond to this allegation. As such, I declined to hear the merits of the allegation from January 3 to 7, 2023 between 5:00 a.m. to 6:00 a.m.
12. With respect to the other allegations, the Landlord has not proven that the Tenant or a person permitted in the residential complex by the Tenant has seriously impaired the safety of another person.
13. This N7 notice is served on the Tenant pursuant to section 66 of the Act. This section permits a landlord to give a tenant a notice of termination if an act or omission of the tenant, the tenant's guest or other occupant of the rental unit seriously impairs the safety of another person, provided that the act or omission complained of occurs in the residential complex. This means that the Landlord must establish that the effect of the actions of the Tenant or their guests threatens the well being or physical integrity of another person to such a degree that termination of the tenancy is reasonable in order to ensure the safety of others. In other words, have the actions of the Tenants or their guests put someone at serious risk of physical harm? Not every risk of physical harm to another will meet the test, as the impairment of safety must be serious.
14. In this case, I find that the Landlord has failed to meet the burden. There is no evidence before me that the presence of the Tenant's alleged guest on January 3, 2023 seriously impaired the safety of another person in the residential complex. Similarly, there is no evidence before me that the Tenant's alleged guests trespassing and setting off the fire alarm on January 7, 2023 seriously impaired the safety of another person in the residential complex. On the face of it, the allegations do not meet the test of serious safety impairment. The Landlord provided testimony based on video surveillance of the occurrences. There was no witnesses present at the hearing to provide direct testimony to affirm that one's safety was seriously impaired due to the January 3, 2023 or January 7, 2023 incidents.
15. The Landlord also alleged that the Tenant or a guest of the Tenant wilfully damaged the rental unit or residential complex by breaking the ceiling light fixture in or near the boiler rooms on January 7, 2023. Based on the evidence before me, I find that the Landlord has failed to prove that the Tenant's alleged guests wilfully caused damages. Even if I accept the Landlord's version of events as true, that the Tenant's guests broke the light fixture, there is no evidence me that this was done wilfully. The Landlord provided a picture of the

broken light fixture and her opinion of what transpired. This is insufficient proof that the undue damage was done willfully.

16. For the reasons above, the Landlord's application based on the N7 notice is dismissed.

N6 Notice of Termination

17. On January 20, 2023, the Landlord gave the Tenant an N6 notice of with a termination date of March 30, 2023. The notice of termination contains the following allegations: the Tenant and her guests are impairing the safety of other residents as the Tenant is involved in the use and sale of illegal drugs between January 3 to 7, 2023; a guest of the Tenant was naked and loitering and using drugs in the common areas on January 3, 2023; and guests of the Tenant are selling and using drugs and triggered the fire alarm on January 7, 2023.
18. The Landlord's N6 notice relies on section 61 of the Act, which provides:

61 (1) A landlord may give a tenant notice of termination of the tenancy if the tenant or another occupant of the rental unit commits an illegal act or carries on an illegal trade, business or occupation or permits a person to do so in the rental unit or the residential complex.

Notice

(2) A notice of termination under this section shall set out the grounds for termination and shall provide a termination date not earlier than,

- (a) the 10th day after the notice is given, in the case of a notice grounded on an illegal act, trade, business or occupation involving,
 - (i) the production of an illegal drug,
 - (ii) the trafficking in an illegal drug, or
 - (iii) the possession of an illegal drug for the purposes of trafficking; or
- (b) the 20th day after the notice is given, in all other cases. 2006, c. 17, s. 61 (2).

Definitions

(3) In this section,

"illegal drug" means a controlled substance or precursor as those terms are defined in the *Controlled Drugs and Substances Act* (Canada);

“possession” has the same meaning as in the *Controlled Drugs and Substances Act* (Canada); (“possession”)

“production” means, with respect to an illegal drug, to produce the drug within the meaning of the *Controlled Drugs and Substances Act* (Canada);

“trafficking” means, with respect to an illegal drug, to traffic in the drug within the meaning of the *Controlled Drugs and Substances Act* (Canada).

19. In order for the Landlord’s application to be successful, the Landlord must establish that events described in the N6 notice expressly relate to the acts of drug trafficking or production. If the Landlord cannot prove, on balance of probabilities, that the events in the notice relate to drug trafficking or production, I cannot issue an order evicting based upon an application made pursuant to that notice. Proof of the presence or use of drugs by the Tenant, other occupants, or guests, is not sufficient for the Landlord’s application to succeed.
20. In my view, the Landlord’s allegation of the presence and behaviour of the Tenant’s alleged guest on January 3, 2023 and the allegation of the Tenant’s alleged guests triggering the firm alarm on January 7, 2023 do not expressly relate to the acts of drug trafficking or production.
21. As such, I turn to the Landlord’s assertions that other tenants in the building complained of the Tenant being involved in the use of sell of illegal drugs and frequent traffic of people entering the property to purchase drugs from the Tenant or her guests. None of these tenants were called to testify. While the Landlord submitted that the police is aware and keeping an eye on the rental unit, there is no evidence before me that the Tenant has been arrested or charges are pending against the Tenant for this offence. The Landlord did not summons a police officer to attend the hearing to testify.
22. The Landlord submitted pictures from video surveillance of individuals in the building allegedly participating in drug transactions. Most of the pictures do not have the Tenant in them. The Landlord submitted that the Tenant knew and let the male seen in the pictures into the building.
23. Based on the evidence before me, I am not satisfied that the Tenant has committed the illegal act of trafficking an illegal drug or that the Tenant permitted another individual to commit this illegal act.
24. The Tenant indicates that she did not know the individuals in the pictures but acknowledged that the male was a friend who was there for one night before the Tenant called the police to have him removed due to his intoxication. The Tenant testified she was not aware that he was in possession of illegal drugs or trafficking drugs in the property. There is no evidence before me that the Tenant permitted any individual to commit an illegal act. There was also no direct evidence before me to confirm that the Tenant herself was in possession of these illegal substances. The Landlord submitted into evidence one picture of the Tenant and submitted that the Tenant was engaged in a drug transaction. Based on a single picture, I am not persuaded by the Landlord’s submissions. The quality

of the picture was low and dark. While I can make out two individuals, what they were exchanging, if anything, was not clear to me.

25. In sum, I find that the Landlord has failed to prove the allegations particularized on the N6 notice. As such, the Landlord's application based on the N6 notice is dismissed.

Damages

Removal of No Trespassing Sign/Chain

26. The Landlord submitted that a guest of the Tenant removed the sign and chain when he was assisting the Tenant move a couch on February 24, 2023.
27. The Tenant acknowledges that this individual help her move the couch but testified that she did not see the sign and chain the Landlord referred to and that this individual was a friend of another tenant.
28. As outlined above, on any application before the Board the person who alleges any particular incident or event occurred has the burden of leading sufficient evidence to establish that it is more likely than not that their version of events is true. In this case that burden falls on the Landlord.
29. I find that the Landlord has led insufficient evidence to establish that the Tenant permitted a guest to wilfully or negligently damaged the sign and chain. The Landlord submitted a picture of this individual holding the chain but failed to provide evidence of this individual with the Tenant or where or what the individual did with the chain. As such, this portion of the Landlord's claim is dismissed.

Damages to the Walls in the Hallway

30. The Landlord submitted that the Tenant scratched and dented the walls with her couch as she moved it in the hallway on the second floor of the residential complex. The Landlord testified that it would cost \$200.00 for labour alone to repair the damage as the Landlord will need to hire a contractor to complete the repairs which includes mudding and painting the damaged areas.
31. The Tenant acknowledged that she was moving a couch but denied causing any damage as she was being careful.
32. Based on the evidence before me, I find it more likely than not that the Tenant wilfully or negligently damaged the walls during the move of her couch. The Landlord submitted a picture of the Tenant moving the couch and it clearly shows that the couch was impacting the wall. The Tenant did not lead evidence to contest the costs of the repair. Based on my knowledge of similar cases, I am satisfied that the costs claimed for this repair is reasonable. The Tenant will be ordered to pay \$200.00.

Broken Washroom Door

33. The Landlord submitted that the Tenant damaged the washroom door in the rental unit. A picture of the door with visible damages was submitted into evidence. The Landlord

submitted into evidence a quote from Regional Doors & Hardware dated October 30, 2023 indicating that it would cost \$553.70 to remove the damaged door and install a new door and hardware.

34. The Tenant did not dispute that she damaged the door. The Tenant testified that she locked herself in and broke the door. The Tenant contested the costs submitted by the Landlord. The Tenant testified that she has seen similar doors at a liquidation store for \$40.00 and a lock can be purchased at a relatively low price. The Tenant submitted that it would cost about \$100.00 in total to replace the damaged door.
35. Based on the evidence before me, I find that the Tenant wilfully or negligently damaged the washroom door in the rental unit. The Tenant did not dispute the damage but submitted that the Landlord's costs were excessive. The Tenant did not provide any documentary evidence to support her estimated costs. Based on my knowledge of similar cases, I am satisfied that the costs claimed for this damage is reasonable. The Tenant will be ordered to pay \$553.70.

It is ordered that:

1. The Landlord's application to terminate the tenancy is dismissed.
2. The Tenant shall pay to the Landlord \$753.70, which represents the reasonable costs of repairing the damage and replacing the damaged property.
3. The Tenant shall also pay to the Landlord \$186.00, which represents the cost of filing the application.
4. The total amount the Tenant owes the Landlord is \$939.70.
5. If the Tenant does not pay the Landlord the full amount owing on or before February 20, 2024, the Tenant will start to owe interest. This will be simple interest calculated from February 21, 2024 at 7.00% annually on the balance outstanding.

February 15, 2024

Date Issued

Vicky Liu

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.