



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

Citation: Donovan v Leeman, 2024 ONLTB 21323

Date: 2024-03-25

File Number: LTB-L-025831-23

In the matter of: 3, 651 VICTORIA ST KINGSTON
ON K7K4S3

Between: Michael Donovan Landlord

And

Maria Leeman Tenant

Michael Donovan (the 'Landlord') applied for an order to terminate the tenancy and evict Maria Leeman (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, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises.

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 February 28, 2024.

Only the Landlord's Representative, Lorrie McCullough, and the Landlord's Agent, David Worsley, attended the hearing.

As of 10:36am, 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 between the Landlord and the Tenant shall be terminated April 24, 2024.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The Tenant was served with an N5 notice to terminate the tenancy on January 27, 2023. The date of termination on that notice was February 28, 2023. The N5 stated that the Tenant failed to keep the rental unit in a reasonably clean state, and that the amount of garbage and clutter in the rental unit had substantially interfered with the reasonable enjoyment of the rental unit of both the Landlord and other tenants in the rental complex, and that the failure to maintain the rental unit in an ordinary state of cleanliness negligently or willfully caused damage of \$8,000.00.
4. The Tenant failed to stop the activities or correct the problem within seven days of service of the notice.
5. The Landlord's Agent, David Worsley (DW), testified that around December 24, 2023, the Landlord had received a call from the Tenant's family member to do a wellness check on the Tenant. Upon entry of the rental unit, DW noticed that the rental unit was very cluttered and that there was a large amount of garbage not disposed of in a proper manner.
6. DW testified that notice was given to the Tenant to inspect the unit for damages on January 18, 2023. Upon the inspection on January 18th, DW observed that there was a significant amount of food not disposed of and in varying states of decomposition on the counter and on the floor. DW also noted that the surfaces of the unit appeared not to have been cleaned in months.
7. DW discovered what appeared to be scorch-marks on the wall in the kitchen, that may have been the result of a fire that was unreported to the Landlord.
8. The Landlord submitted photos of the inspection showing the rotting food as well as what appears to be damage as a result of a fire in the kitchen.
9. The Landlord scheduled a follow-up inspection on March 24, 2023, at 10:25am, where DW discovered that there had been no improvement to the rental unit.
10. DW testified that the Landlord's main concern, beside the state of the rental unit, is the inability to maintain any proper pest control in the complex due to the condition of the Tenant's rental unit. Due to the high amounts of clutter and the foodstuffs not properly disposed of, the Landlord has not been able to treat this unit or surrounding units effectively for pests.
11. DW also testified that they had reached out to the Tenant's family as well as volunteered contact information for various services which may be able to help the Tenant clean the unit, but the Tenant did not follow through with accessing any of these services or help.
12. DW testified that the rental unit is in the same state as it was in March 2023 and has gotten worse since then.

Analysis

13. Pursuant to section 64 of the *Residential Tenancies Act, 2006*, (the 'Act'), a Landlord may issue a notice to terminate a tenancy if the Tenant's behaviour substantially interferes with the reasonable enjoyment or the lawful rights and privileges of the Landlord and/or other tenants of the rental complex.
14. Based on the evidence before me, I am satisfied that the Tenant's failure to maintain the rental unit has substantially interfered with the reasonable enjoyment of both the Landlord and other tenants in the rental complex.
15. Furthermore, pursuant to section 64(3) of the Act, I am satisfied that the Tenant had failed to void the N5 notice served on January 27, 2023, within seven days of receipt of the notice.

Daily Compensation & Rent Deposit

16. The Tenant was required to pay the Landlord \$7,128.00 in daily compensation for use and occupation of the rental unit for the period from March 1, 2023, to February 28, 2024.
17. Based on the Monthly rent, the daily compensation is \$19.53. This amount is calculated as follows: \$594.00 x 12, divided by 365 days.
18. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
19. The Landlord collected a rent deposit of \$400.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$125.06 is owing to the Tenant for the period from July 1, 2006, to February 28, 2024.
20. 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.

Relief From Eviction

21. Despite the Tenant not being present at the hearing, the Board may still consider any reasons under section 83 of the Act to determine if it would be fair to delay or deny the Landlord's application.
22. At the hearing, the Landlord asked that the eviction date be delayed by 30 days in consideration of the age of the Tenant as well as addressing the fact that the Tenant has resided at the rental unit for over 17 years.
23. 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 not be unfair to postpone the eviction until April 24, 2024, pursuant to subsection 83(1)(b) of the 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 April 24, 2024.
2. If the unit is not vacated on or before April 24, 2024, then starting April 25, 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 April 25, 2024.
4. The Tenant shall pay to the Landlord \$7,128.00, LESS ANY RENT PAID SINCE MARCH 1, 2023, which represents compensation for the use of the unit from March 1, 2023, to February 28, 2024.
5. The Tenant shall also pay the Landlord compensation of \$19.53 per day for the use of the unit starting February 29, 2024, 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. The Landlord owes \$525.06 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 \$6,788.94.
9. If the Tenant does not pay the Landlord the full amount owing on or before April 24, 2024, the Tenant will start to owe interest. This will be simple interest calculated from April 25, 2024, at 7.00% annually on the balance outstanding.

March 25, 2024

Date Issued

Robert Brown
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 October 25, 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.

