



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

Citation: Calvary Seniors Non-Profit c/o Shabri Properties Limited v Claus, 2024 ONLTB 1605

Date: 2024-01-08

File Number: LTB-L-023421-22

In the matter of: 207, 21 ST. HELENA ST ST
CATHARINES ON L2N7P3

Between: Calvary Seniors Non-Profit c/o Shabri Properties Limited Landlord

And

Laurie Claus Tenant

Calvary Seniors Non-Profit c/o Shabri Properties Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Laurie Claus (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 December 13, 2023.

The Landlord's Legal Representative, Judith Callender, and the Landlord's Agent, Heather Lindsay, attended the hearing.

Cindy Ferguson ("CF") and Viola Smith ("VS") attended as witnesses for the Landlord.

The Landlord's Legal Representative submitted that the Landlord made numerous attempts to contact the Tenant on the hearing day. As of 10:11 a.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. The hearing was peremptory on the Tenant. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. The Landlord's application is based on a second, non-voidable N5 Notice alleging the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with another tenant's or the Landlord's reasonable enjoyment of the residential complex and/or lawful rights, privileges, or interests.
2. In order to proceed with an application for eviction based on a second, non-voidable N5 Notice served under section 68 of the *Residential Tenancies Act, 2006* ("Act"), I must find a valid first voidable N5 Notice had been served. Additionally, the conduct alleged in the second N5 Notice must take place more than seven days but less than six months after the first N5 Notice was served.

First N5 Notice

3. The Landlord served an N5 Notice on March 11, 2022 on the Tenant with a termination date of April 10, 2022.
4. The Landlord's N5 Notice alleges the Tenant has substantially interfered with another tenant's reasonable enjoyment of the residential complex by creating excessive noise and loud disturbances on December 9, 2021, February 21, 2022, and February 2022.
5. On review of the N5 Notice, I find the notice provide sufficient detail that a reasonable tenant could have understood the precise actions or omissions that caused the Landlord to pursue eviction and know the case they had to meet to prepare an effective response. As such, I find the first N5 valid.
6. At the hearing, the Landlord submitted that the Tenant voided the N5 Notice as there was no incident during the voiding period of March 12, 2022 to March 18, 2022.

Second N5 Notice

7. On April 21, 2022, the Landlord gave the Tenant a second, non-voidable N5 Notice with a termination date of May 14, 2022. This was more than seven days and within six months after the first N5. The termination date of May 14, 2022 was 14 days after the date of service. The timing of notice and service requirements contained in section 68 of the Act were satisfied.
8. The second N5 Notice alleged an incident on March 21, 2022, an incident on April 5, 2022 and an incident on April 6, 2022.
9. CF provided oral testimony at the hearing and appeared as the Landlord's first witness. CF is the tenant of unit 208 which is adjacent to the Tenant's unit. The two units share a common wall.
10. CF testified that on March 21, 2022, the Tenant was heard yelling and screaming from 7:00 p.m. to 2:00 a.m. The Tenant was also heard banging on the wall. A copy of the incident report written by CF was submitted into evidence.

11. CF testified that on April 5, 2022, a man named Joseph who frequently visits the Tenant was found loitering in the lobby. Joseph was in a wheelchair that smelled like urine which resulted in the common area smelling like urine. A copy of the incident report written by CF was submitted into evidence.
12. CF testified that on April 6, 2022, the Tenant was heard yelling and screaming at Joseph from 9:30 p.m. to 11:00 p.m. At 12:44 a.m., the ambulance arrived to remove Joseph from the unit and the Tenant subsequently moved his wheelchair to the basement of the building. When CF questioned the Tenant, the Tenant told CF to “mind your own business”. CF notified the superintendent, and the superintendent moved the wheelchair outside. A copy of the incident report written by CF was submitted into evidence.
13. Based on the Landlord’s uncontested evidence, I find that the excessive noise caused by the Tenant on March 21, 2022 and April 6, 2022 and the Tenant leaving her guest’s wheelchair in the common area of the building substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant
14. The allegation on April 5, 2022 is dismissed. CF acknowledged that the Tenant did not let Joseph into the building. Even if the Tenant did, I would, in my view, not find the incident amounted to substantial interference.

Section 83 Considerations

15. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.
16. CF testified that the Tenant continues to yell and scream and that police regularly visits the Tenant’s unit. CF testified that the level of stress in her life has increased due to the Tenant’s conduct and that the Tenant continues to harass her.
17. VS provided oral testimony at the hearing and appeared as the Landlord’s second witness. VS is the tenant of unit 203 which is 3 units away from the Tenant’s unit.
18. VS testified that she hears the Tenant yelling on a regular basis. VS testified that she hears the Tenant on her balcony yelling and slamming the balcony door at least 4 times a week.
19. The rental unit is a rent-geared-to-income unit in a senior’s building. Given the Tenant’s age and the length of the tenancy, I find that it would not be unfair to provide the Tenant with an opportunity to preserve the tenancy if the Tenant refrains from the behaviours complained of in the notices of termination.
20. The Landlord has incurred costs to file their application and is entitled to a reimbursement of these costs in the amount of \$186.00.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.

2. For the duration of the next 12 months, the Tenant shall refrain from the following conduct as outlined on the N5 notices of termination:
 - a) Leaving any object or item in the common areas of the residential complex; and
 - b) Generating noise that is known or ought to be known to cause discomfort/to be disruptive to other residents of the complex.
3. If the Tenant fails to comply with the conditions set out in paragraph 2 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.
4. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing on or before January 19, 2024, the Tenant will start to owe interest. This will be simple interest calculated from January 20, 2024 at 7.00% annually on the balance outstanding.

January 8, 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.