



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

Citation: Yellow Brick Road Management Inc. v Charles, 2024 ONLTB 6467

Date: 2024-01-26

File Number: LTB-L-073769-23

In the matter of: 327, 10 Hemlo Drive Marathon
ON P0T2E0

Between: Yellow Brick Road Management Inc. Landlord

And

Joshua Charles Tenant

Yellow Brick Road Management Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Joshua Charles (the 'Tenant') 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.

This application was heard by videoconference on December 11, 2023.

Only the Landlord's Representative, Karen Scott, and the Landlord's Agent, Cassandra Guitar, attended the hearing.

As of 10:24am, 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. Therefore, the tenancy shall be terminated as of January 31, 2024.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On September 13, 2023, the Landlord served the Tenant an N7 notice of termination. The notice of termination alleges that the rental unit is being kept at such an extremely unclean state and that it is affecting the health and safety of neighbouring rental units.
4. Cassandra Guitar (CG) gave testimony for the Landlord.

5. CG is the property manager for the rental complex and has been employed by the Landlord in this position for the past two years.
6. CG testified that the rental complex is three floors high, with four rental units on each floor. The majority of the tenants are seniors and families with young children.
7. The Tenant resides on the top floor. The Tenant has three cats and two dogs.
8. CG testified that prior to an inspection of the rental unit on June 20, 2023, the Landlord had received complaints from other tenants of the rental complex of a strong ammoniabased smell. The smell, as according to CG's description was of urine.
9. CG testified that prior to entering the unit, the smell of ammonia emanating from the rental unit was very strong.
10. CG conducted the inspection of the rental unit alongside a representative of the Thunder Bay District Health Unit. CG testified that she saw fecal matter spread on the walls throughout the rental unit as well as evidence of both dog and cat urine and fecal matter on the floors and other surfaces throughout the unit. The balcony also had a substantial amount of feces and urine on the floor.
11. CG presented a photo taken of the balcony on June 20, 2023. The photo showed the balcony contained such a substantial amount of fecal matter, that it was difficult to see areas of bare floor.
12. CG also submitted other photos of the rental unit that showed a substantial amount of dog and cat feces and several damp spots that CG identified as urine.
13. CG testified that they gave the Tenant the opportunity to rectify the situation and clean the rental unit.
14. CG testified that a second inspection occurred August 22, 2023. CG was again accompanied by an inspector from the Thunder Bay District Health Unit. CG testified that the smell of urine and feces was apparent when they entered the rental complex. on the main floor of the rental complex. As previously stated, the Tenant's rental unit is on the third floor.
15. CG testified that upon entry, the inspector was overwhelmed by the urine and fecal odours and needed to leave the unit right away. CG testified that she stayed in the rental unit a bit longer to observe that the rental unit was in worse condition than it was when inspected in June 2023.
16. The inspector's report (submitted as evidence) stated that the ammonia smell emanating from the rental unit was so substantial that it is a health hazard to nearby tenants.
17. CG testified that she has received complaints from neighbours adjacent and beneath the Tenant's rental unit that include experiencing some headaches and other ailments that may have been caused by the state of the Tenant's rental unit.
18. The Landlord is seeking termination of the tenancy.

Analysis

19. Section 66(1) of the *Residential Tenancies Act, 2006* (the 'Act') states:

66 (1) A landlord may give a tenant notice of termination of the tenancy if,

(a) an act or omission of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant seriously impairs or has seriously impaired the safety of any person; and

(b) the act or omission occurs in the residential complex.

20. Generally, matters that deal with the Tenant's failure to maintain a reasonable state of cleanliness are dealt with as a substantial interference with the Landlord's and other tenants' reasonable enjoyment of the rental unit or their lawful rights and privileges. However, the Landlord chose to proceed with a notice alleging that the Tenant's failure to maintain a reasonable state of cleanliness is affecting the safety of the Landlord and other tenants of the rental complex. The bar in which to prove such a case is much higher than if the Landlord has chosen to proceed with a notice to terminate due to substantial interference, pursuant to section 64 of the Act.
21. Based on CG's first-hand account of both inspections, and the submitted corroborating evidence, I am satisfied, on a balance of probabilities, that the state of the Tenant's rental unit is in such a poor state of sanitation that it impairs the safety of the neighbouring tenants as well as any employees that have to enter the rental complex or the Tenant's rental unit.
22. I find that the Landlord has met the burden of proof required to prove the allegations in the N7 served to the Tenant.
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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

Last Month's Rent Deposit

24. The Landlord collected a rent deposit of \$841.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$29.96 is owing to the Tenant for the period from January 1, 2022, to December 11, 2023.
25. 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.

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 January 31, 2024.

2. If the unit is not vacated on or before January 31, 2024, then starting February 1, 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 February 1, 2024.
4. The Landlord owes \$870.96 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.

15 Grosvenor Street, Ground Floor,
Toronto ON M7A 2G6

Robert Brown
Member, Landlord and Tenant Board

January 26, 2024

Date Issued

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 August 1, 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.