



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

Citation: YMCA Hamilton/Burlington /Brantford v Scanlan, 2024 ONLTB 21577

Date: 2024-03-25

File Number: LTB-L-027582-23

In the matter of: 532, 79 JAMES ST S HAMILTON
ON L8P2Z1

Between: YMCA Hamilton/Burlington /Brantford Landlord

And

Joshua Scanlan Tenant

YMCA Hamilton/Burlington /Brantford (the 'Landlord') applied for an order to terminate the tenancy and evict Joshua Scanlan (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.

This application was heard by videoconference on February 14, 2024.

Only the Landlord's agent, Ashley Laing, attended the hearing.

As of 10:21am, 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 Tenant must move out of the rental unit on or before April 30, 2024.

2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The Tenant is in possession of the rental unit.
4. The rent is \$444.00 due on the first of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$14.60. This amount is calculated as follows: \$444.00 x 12, divided by 365 days.
6. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
7. There is no last month's rent deposit.

First and second N5 notices

1. On March 2, 2023, the Landlord served the Tenant with an N5 notice with a termination date of March 31, 2023, alleging that on March 1, 2023 the Landlord was unable to inspect the Tenant's rental unit due to hoarding and the dirty conditions the Tenant was maintaining in the rental unit. The N5 notice claims the Tenant substantially interfered with the reasonable enjoyment of the residential complex by the Landlord or another tenant, or has substantially interfered with a lawful right, privilege or interest of the Landlord or another tenant.
2. Section 68(1) of the Residential Tenancies Act, 2006 (the 'Act') states: A landlord may give a tenant notice of termination of the tenancy if,
 - (a) a notice of termination was given to the tenant under section 62, 64 or 67, and
 - (b) more than seven days but less than six months after the notice mentioned in clause (a) was given to the tenant, an activity takes place, conduct occurs or a situation arises that constitutes grounds for a notice of termination under section 60, 61, 62, 64 or 67, other than an activity, conduct or a situation that is described in subsection 61(1) and that involves an illegal act, trade, business or occupation described in clause 61(2) (a).
3. Pursuant to section 68(1) of the Act, the Landlord served the Tenant with a second N5 notice on March 18, 2023 with a termination date of April 2, 2023. The Landlord's application is based on the second N5 notice filed with the Board on April 3, 2023. Accordingly, the Landlord need not prove the truthfulness of the allegations in the first N5 notice, only that it meets the statutory requirements contained in section 64 of the Act. I am satisfied that it does.

4. The second N5 notice contains allegation that on March 17, 2023 the Landlord again attempted to perform an inspection of the rental unit, but the Tenant continues to prevent the Landlord from inspecting the rental unit due to the hoarding and dirty conditions of the rental unit. The Landlord claims there are signs of the pest infestation which require the Landlord access to the rental unit in order to assess the rental unit for treatment for the pests.
5. I acknowledge it would be prejudicial to a tenant if the allegations in a first N5 notice were without any foundation and made simply for the purpose of allowing a landlord to serve a second, non-voidable notice pursuant to section 68(1). I am satisfied that is not the case in the matter before me.

Landlord evidence

6. The Landlord submitted a copy of an inspection report that identified some deficiencies in the Tenant's rental unit. On the inspection report the author made notes "...can't see." And "Can't properly inspect room due to clutter / garbage." This report was dated January 31, 2024 and the Landlord claims the issue is still ongoing.
7. The Landlord also submitted photos of the Tenant's rental unit to illustrate the extent of the clutter.
8. In the first photo the door can barely be opened due to the amount of clutter in the front hallway.
9. The second photo shows the stated of the clutter just inside the Tenant's rental unit. The amount of clutter is such that the floor is not visible and there does not appear to be any egress between any of the rooms.
10. In some areas the pile of clutter is stacked so high it is almost up to the ceiling.
11. The clutter appears to be clothes, empty alcohol bottles, furniture and bags and boxes.
12. The Landlord's agent testified that this is a 174 room, all male residence / transition house.
13. The Landlord has tried to work wit the Tenant by providing bins for the Tenant to undertake cleaning up his rental unit and the Landlord has also attempted to work with the Tenant by connecting him with social workers and other social agencies to rectify the problem.
14. As of the day of the hearing, the Tenant had not corrected the behaviour or cleared out the clutter in the rental unit.
15. Based on the uncontested evidence and submissions before me, I am satisfied that the Tenant has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant. I am satisfied that the allegations that formed the basis of the application have been made out on a balance of probabilities.

Relief from eviction

16. The Landlord's agent testified that the Tenant does not have any young children or persons with special needs living in the rental unit with him.
17. The Landlord requested an extended order for eviction in order to allow the Tenant time to remedy the clutter problem or find alternative housing.
18. 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 30, 2024 pursuant to subsection 83(1)(b) of the Act.
19. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
20. This order contains all reasons for the determinations and order made. No further reasons will be issued.

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 30, 2024.
2. If the unit is not vacated on or before April 30, 2024, then starting May 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 May 1, 2024.
4. The Tenant shall also pay the Landlord compensation of \$14.60 per day for the use of the unit starting February 15, 2024 until the date the Tenant moves out of the unit.
5. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
6. The total amount the Tenant owes the Landlord is \$4,827.93.
7. If the Tenant does not pay the Landlord the full amount owing on or before April 30, 2024, the Tenant will start to owe interest. This will be simple interest calculated from May 1, 2024 at 7.00% annually on the balance outstanding.

March 25, 2024

Date Issued

Greg Brocanier

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 November 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.