



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

Citation: TRACEY PARK PROPERTY MANAGEMENT INC. v Chambers, 2024 ONLTB 26400

Date: 2024-04-18

File Number: LTB-L-049628-23

In the matter of: 40, 18 TRACEY PARK DR
BELLEVILLE ON K8P4R5

Between: TRACEY PARK PROPERTY MANAGEMENT INC. Landlord

And

Shannon Carol Chambers Tenant

TRACEY PARK PROPERTY MANAGEMENT INC. (the 'Landlord') applied for an order to terminate the tenancy and evict Shannon Carol Chambers (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 April 4, 2024.

Only the Landlord's Agent Sandra Katz attended the hearing.

As of 10:13 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. 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, but the Landlord seeks a conditional order which is being granted.

2. The Tenant was in possession of the rental unit on the date the application was filed.

N5 Notice of Termination -Substantial interference

3. On June 5, 2023, the Landlord gave the Tenant an N5 notice of termination deemed served the same day. The notice of termination contains the following allegations:

On or about May 3, 2023 : Letter sent to Tenant reminding you of the rules related to use of common areas -front lawns and outdoor furniture/personal items at Tracey Park and requested you remove all prohibited items from any and all common areas.

On or about May 25, 2023: We conducted an inspection of the grounds at Tracey Park and have photo evidence that you are in direct violation of the rules related to use of common area by having erected a gazebo-style structure. This structure prevents Landlord and its agents from regular maintenance on the premises.

4. The N5 notice was served pursuant to section 64(1) of the *Residential Tenancies Act, 2006* (the "Act") which states that:

A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.

5. The Landlord's Agent Sandra Katz testified that the residential complex is a townhouse complex where each tenant has a patio area which is for their use and for keeping their outdoor furniture, personal items etc. and it is surrounded by lawn area which is considered common area. The grass and other surrounding area is maintained by the Landlord. The tenants are not allowed to store personal belongings in the area outside of the patio area. Every year the Landlord sends a letter to all residents reminding them of their rights and obligations related to the shared area which was done on May 3, 2023. The Tenants were asked in the letter to remove any gazebos and structures by May 15, 2023.
6. On May 25, 2023 the Landlord found the Tenant still to be in contravention of the rules of the residential complex so the Tenant was served a N5 on June 5, 2023. The letter from May 3, 2023 stated that:
 - Common Areas- Front Lawns – Ensure common areas are free from personal items/children's toys.
 - Outdoor Furniture/Personal Items – All personal items/outdoor furniture/children's toys/bikes (except barbeque) are to be removed.

7. The Landlord conducted another inspection on June 13, 2023. (A picture from June 13, 2023 was submitted) Sandra Katz testified that the Tenant had removed the gazebo but various items of the Tenant like the toys, lawn mower and other miscellaneous articles were still on the lawn area which is considered common space. This prevents the Landlord or its employees from doing maintenance in the residential complex.
8. As per s.64(3) of the *Residential Tenancies Act, 2006* (the "Act"), the voiding period of the N5 notice is from June 5 to June 12, 2023. While the Tenant removed the gazebo during the voiding period but failed to remove other articles from the common area. Therefore, the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).
9. A copy of the lease was also submitted with all the rules and regulations signed by the Tenant, so she is aware of them. The Schedule A – Lease terms and conditions on paragraph 14 states:

The landlord has a duty to properly maintain all common areas. The tenant has a responsibility to treat all common areas with respect. Sidewalks, entryways and stairways shall not be obstructed or used for any purposes rather than to gain access to and from the rental premises. This includes any all areas used in common (not privately enclosed) included but not limited to exterior walkways exterior parts leading to exterior private entrances exterior sidewalks and yards.

10. The Tenant Handbook given to all tenants when the tenancy begins, under the heading Outdoor Maintenance, states that tenants are responsible to make sure all their space is cleared of debris and clutter. The property management will bill \$50.00 in the event of the Landlord's employees coming for maintenance and have to remove garbage. The Tenants are asked to respect common areas by not leaving garbage, personal items or using them in a negligent or irresponsible way.
11. Based on the evidence before me and uncontested testimony, I find that the Tenant has breached the rules of the residential complex. Even though she tried to comply by removing the gazebo within the voiding period, but she failed to remove other personal items.
12. I accept the testimony of the Landlord that the Tenant has substantially interfered with the Landlord's lawful rights, privileges and interests by failing to clear her personal property from the common areas of the residential complex. The presence of personal items in the lawn area prevents the Landlord from completing their obligation of maintaining all outdoor spaces including but not limited to grass cutting.

Relief from eviction

13. 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

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.

14. Sandra Katz testified that the Tenant has more recently made efforts to comply with the rules of the residential complex. Another picture from March 13, 2024, was submitted showing that the Tenant had significantly reduced the articles from the common area.
15. The Landlord is seeking a conditional order, for the Tenant to comply with rules of the residential complex and keep all common areas free of debris, planters and personal possessions.
16. I find that it would not be unfair to grant the Tenant a chance to preserve her tenancy by granting a conditional order since she has been mindful of the rules of the residential complex.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
2. The Tenant shall comply with the rules and regulations regarding use of the common areas in the residential complex which includes but not limited to keeping all common areas free of any personal items including but not limited to planters, debris, garbage, gardening tools, toys/bikes etc.
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.

June 13, 2024

Date Issued

Sheena Brar

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.