



**Order under Section 69 / 89
Residential Tenancies Act, 2006**

Citation: Norberry Residences v Sajo, 2024 ONLTB 13159

Date: 2024-04-09

File Number: LTB-L-021334-23

In the matter of: 339, 2660 NORBERRY CRES
OTTAWA ON K1V6N2

Between: Norberry Residences Landlord

And

Benjamin Sajo Tenants
Gail Offstein-Sajo
Mary Elizabeth Ann Conlon

Norberry Residences (the 'Landlord') applied for an order to terminate the tenancy and evict Benjamin Sajo, Gail Offstein-Sajo and Mary Elizabeth Ann Conlon (the 'Tenants') because:

- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another Tenants;
- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully or negligently caused damage to the premises.

The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

Norberry Residences (the 'Landlord') also applied for an order requiring Benjamin Sajo, Gail Offstein-sajo and Mary Elizabeth Ann Conlon (the 'Tenants') to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex.

This application was heard by videoconference on February 7, 2024.

The Landlord's Legal Representative, Charlie Bobrowsky attended the Hearing. The Landlord also called four witnesses L.A., E.S., TA, and V.S. The Tenants, Benjamin Sajo, and the Occupant, Mary Elizabeth Ann Conlon, It was agreed by the parties that Mary Elizabeth Ann Conlon would act as the Tenants' agent during the hearing.

Determinations

Preliminary Issue: Is Mary Elizabeth Ann Conlon a Tenant or Occupant

1. At the outset of the hearing the Tenants took the position that Mary Elizabeth Ann Conlon was improperly identified as an occupant when she should be considered a tenant. The Tenants indicated that Ms. Conlon had resided in the rental unit for many years and that Tenant B.S. no longer resided there as his primary residence, as he had relocated for work. The Tenants indicated that he had not vacated the rental unit.
2. It was agreed by the parties that Ms. Conlon was identified on the lease as an occupant. Moreover, there was no evidence before me to support a finding that at some point the parties agreed, either expressly or impliedly, that Ms. Conlon would be a tenant despite the written agreement. As directed by the Tenants I considered Guideline 21. I am satisfied that Ms. Conlon is properly characterized as an occupant. While there are special rules surrounding spouses, however, none of these rules apply in this case. Accordingly, Ms. Conlon is confirmed as an occupant.

L2 Application

3. The Landlord alleges that the Tenants have substantially interfered with their interests and wilfully or negligently caused undue damage to the rental unit because the rental unit's floor has been destroyed by dog feces and urine, and there is a strong and foul smell emanating from the rental unit.
4. 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 Tenants is terminated Effective April 30, 2024.
5. The Tenants were in possession of the rental unit on the date the application was filed.

The Tenants substantially interfered and caused undue damage to the rental unit

6. The Landlord's application is based on a first N5 notice of termination that was served on the Tenants on February 28, 2023. The N5 notice claims "substantial interference" under subsection 64(1) of the *Residential Tenancies Act, 2006* (the 'Act') and clearly identifies that during an inspection the unit was found to contain dog feces and animal urine on the floors. The N5 also alleges that other Tenants of the building have complained about a strong smell emanating from the unit.

7. The Landlord also seeks \$1347.53. for the cost of replacing the flooring in the Tenants' unit which, which the Landlord says was wilfully or negligently damaged by the feces and urine. If they are successful in their application, the Landlord is seeking termination of the tenancy.
8. In support of their position the Landlord called a total of four witnesses. I found they provided credible and reliable testimony regarding the state of the Tenants' unit and the smell emanating from it.
9. The Landlord's evidence established that that inspections were performed on February 9, 2023, February 17, 2023, February 24, 2023, and August 8, 2023. Each inspection revealed the rental unit containing significant animal feces and urine, which had caused extensive damaged to the flooring in the unit. V.S. also confirmed that an estimate to replace the damaged flooring in the Tenants' unit had been obtained from Upper Canada Wood Flooring at a total cost of \$1177.80 plus HST.
10. The Landlord drew my attention photographs depicting the state of the unit during these inspections. The photos appear to show feces in the rental unit.
11. The Landlord's witnesses also testified at length of the smell emanating from the unit, and confirmed that this was not remedied after the Tenants was served with the N5.
12. E.S. is a neighbouring tenant in the residential complex. They testified that that the smell emanating from the Tenants' rental unit had been an ongoing issue since 2019, and could be smelled in the hallway and in E.S.' own unit. She further testified that she was reluctant to have company over and had considered vacating the residential complex as a result of the odour. E.S. testified that the odour had began to impact her personal life as well, as her partner refused to cohabituate in her rental unit due to the ongoing smell.
3. The Tenants denied the allegations, largely through their agent M.C.. M.C. admitted during cross-examination that while her dogs occasionally defecate and urinate in the unit, the unit is free from any such waste. She denied that any of the stains in the Landlords photos were caused by feces and urine, and denied that the floors were damaged as alleged by the Landlord. M.C. testified that she has gone above and beyond in cleaning her unit, including buying several expensive vacuums, and other cleaning supplies to keep the unit in a state of ordinary cleanliness. M.C. testified that stains can come from many things, and that the strains and discolouration on her floors resulted from children spilling drinks, and other activities of daily living.
4. In support of their position the Tenants submitted many photographs and videos. They photographs were taken on various dates spanning February 23, 2023, February 24, 2023, and March 2, 2023. The video was taken on February 17, 2023. M.C. submitted that the Tenants' photographs were higher quality than those provided by the Landlord and represent a more accurate depiction of the unit. They also relied upon a truncated messenger conversation between M.C. and a rug seller, which M.C. testified explained the stains visible on a particular area rug as having come from age rather than feces and

urine. While I admitted this evidence, I find it to be highly speculative hearsay, and I have accorded it very little weight.

5. Ultimately, I found much of the Tenants' evidence to be a of little probative value. Quite candidly, the photographs and video provided do not depict a clean rental unit. While I am alive to the fact that definitions of cleanliness are relative and not absolute, several of the Tenants' photographs depict flooring which is heavily stained, which is consistent with the Landlord's position. I also accept E.S.'s evidence, as well as that there is a strong offensive smell emanating from the Tenants' rental unit. This also, supports the Landlord's position that the stains are from animal waste.
6. Based on the testimony provided and the evidence submitted, including the subsequent inspection that established the stains remain in the flooring, I am satisfied that the Tenants did not correct the problems complained about in the N5 notice within the 7-day voiding period set out in the N5 Notice of Termination. The N5 notice was, therefore, not voided.
7. I am further satisfied on a balance of probabilities that the smell emanating from the rental unit substantially interferes with the reasonable enjoyment of the residential complex or lawful right, privilege or interest of the Landlord or another Tenants. I am also satisfied that the Tenants have wilfully or negligently caused undue damage to the flooring due to the animal feces and urine. By its nature, I am satisfied that this damage was wilfully or negligently caused, and that it was done so by Tenants or their occupant M.C.

Relief from eviction

8. 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. There is evidence before me (in the form of the August 2023 inspection) that the problem continued to persist well beyond the voiding period, and testimony that it continues to this day, to my mind this suggest that a conditional order is not appropriate. Balanced against this it is the evidence of the Tenants that they have resided in the rental unit for many years, and that a move would be highly disruptive to them. In my view, it would not be unfair in the circumstances to delay eviction until May 31, 2024 in order to give the Tenants an opportunity to find new accommodations.

Compensation for damage

9. The Landlord also claims \$1,347.54 for the reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. I accept the Landlord's evidence, specifically the estimate they submitted, that they will incur reasonable costs of \$1,347.53 to repair the damage caused by the Tenants. Accordingly, I award the landlord \$1,347.53 in compensation for the damages caused.

Daily Compensation

10. The Tenants were required to pay the Landlord \$12,593.82 in daily compensation for use and occupation of the rental unit for the period from April 1, 2023 to February 7, 2024.
11. Based on the Monthly rent, the daily compensation is \$40.24. This amount is calculated as follows: \$1,223.84 x 12, divided by 365 days.
12. The Tenants have paid \$13,462.24 since the Termination date in the Notice of Termination.
13. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
14. The Landlord collected a rent deposit of \$1,223.85 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$33.78 is owing to the Tenants for the period from January 1, 2023 to February 7, 2024 .
15. 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 Tenants is terminated. The Tenants must move out of the rental unit on or before May 31, 2024.
2. If the unit is not vacated on or before May 31 30, 2024, then starting June 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 June 1, 2024.
4. The tenancy between the Landlord and the Tenants is terminated as of May 31, 2024.
5. The Tenants shall also pay the Landlord compensation of \$40.24 per day for the use of the unit starting February 8, 2024 until the date the Tenants moves out of the unit.
6. The Tenants shall pay to the Landlord \$1,347.53, which represents the reasonable costs of repairing the damage
7. The Tenants shall also pay to the Landlord \$186.00 for the cost of filing the application.
8. The Landlord owes \$1,257.63 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Tenants.
9. If the Tenants do not pay the Landlord the full amount owing on or before May 31, 2024, the Tenants will start to owe interest. This will be simple interest calculated from June 1, 2024 at 7.00% annually on the balance outstanding.

April 9, 2024

Date Issued

Reid Jackson
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 Tenants expires on December 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.