



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

**Citation:** Sireg Management Inc. v McSwain, 2024 ONLTB 8664

**Date:** 2024-02-02

**File Number:** LTB-L-043969-23

**In the matter of:** 201, 558 DURHAM CRES  
WOODSTOCK ON N4S5X3

**Between:** Sireg Management Inc. Landlord

**And**

James McSwain Tenants  
Gwyneth McSwain

Sireg Management Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict James McSwain and Gwyneth McSwain (the 'Tenants') because:

- the Tenant or another occupant of the rental unit has committed an illegal act or has carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential complex.

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

This application was heard by videoconference on July 6, 2023.

The Landlord's Legal Representative, Elena Jacob, and the Tenants attended the hearing. The Tenants spoke to Tenant Duty Counsel prior to the hearing. Linda Scalisi ('L.S.') appeared as a witness for the Landlord.

**Determinations:**

1. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the application is dismissed.
2. The Tenants were in possession of the rental unit on the date the application was filed.

3. On June 1, 2023, the Landlord gave the Tenants an N6 notice of termination ('N6 Notice') with a termination date of June 21, 2023. The notice of termination contains the allegation that on May 30, 2023, the Tenant ('G.M.') was drinking in the maintenance room of the residential complex with another tenant. When the superintendent ('L.S.') asked them to leave the maintenance room, G.M. verbally assaulted L.S. by calling her names. L.S. proceeded to contact the police and G.M. took the phone from her and refused to return it

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to L.S. As G.M. was exiting the maintenance room, he shoved L.S. resulting in her hitting the door frame and injuring her arm.

*Evidence of L.S. – Landlord's witness*

4. In her testimony, L.S. stated she is employed by the Landlord as the superintendent. The residential complex consists of 6 floors with 46 rental units. The building is mostly occupied by adults.
5. L.S. testified that at approximately 8:30 p.m. on May 30, 2023, she attended at the maintenance room and found the door was open. When she entered she observed G.M. in the room drinking beer. She asked him why he was there and told him to leave. G.M. refused to leave and told her to "go to hell". He expressed that he rents the maintenance room with Kevin Ross. She testified the situation escalated so she contacted her superior.
6. L.S. testified G.M. was yelling at her, calling her names. As she called the police, G.M. took the phone from her, she was able to retrieve the phone while the police were on the line. She testified that G.M. left shortly after but on his way out, he shoved her into the door way and shut the door on her.
7. In her continued testimony, L.S. stated there have been a couple of other incidents with G.M. however there has been no escalation on the part of G.M. When asked if she believed the behaviour would continued, she responded "who knows?". She stated she is concerned for the safety of the other residents because she does not want anyone drinking at the complex. When asked how the incident affected her and if she suffered any impact, L.S. stated "not much, I just ignore him". L.S. added there have been no further aggressive incidents since May 30, 2023.

*Evidence of G.M. - Tenant*

8. In his testimony, G.M. did not deny being in the maintenance room but expressed that he was not drinking beer, he is not a big drinker and had a coffee. He stated he had recently quit his employment with Landlord and was in the maintenance room returning some tools from his truck. He admitted he was upset with L.S. and said a few profanities to her but denied causing her any harm.

9. G.M. testified he and his spouse have lived in their unit since 2011 and there have been no other incidents as described in the N6 Notice. He expressed his remorse for the incident and said it should not have happened but he was having a bad day. He added there is no animosity between himself and L.S.

## Analysis

10. A landlord who gives a tenant a notice of termination pursuant to section 61(1) of the Act must establish on a balance of probabilities that the tenant committed the illegal act.
11. Based on the evidence before me, I do not find on a balance of probabilities that G.M. committed an illegal act. While the altercation on May 30, 2023 was unpleasant and G.M.'s behaviour was unwarranted and unjust, I am not satisfied that the Landlord has met the threshold to terminate the tenancy. I say this because it was a single incident and according

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to the testimony of L.S. it caused her very little impact and her injury was not severe. Overall, I am not persuaded that the Landlord has established its claim on an illegal act. While it is likely that the G.M. got into an argument, probably a heated one, with L.S., it cannot be said that the Tenant breached the Act.

12. The *Residential Tenancies Act, 2006* (the 'Act') is remedial legislation and the courts have determined that evicting a tenant is a remedy of last resort. In the cases of *Sutherland v. Lamontagne*, [2008] O.J. No. 5763 (Div. Ct.) and *Paderewski Society v. Ficyk*, [1998], the Divisional Court stated, "to put somebody out of their home must, in my view, call for clear and compelling circumstances that it's no longer possible for the arrangement to continue." I find that the circumstances in this application do not rise to that level.
13. As a result of my findings, the Landlord's application shall be dismissed.
14. This order contains all the reasons within it. No further reasons will be issued.

## It is ordered that:

1. The Landlord's application is dismissed.

**February 2, 2024**

**Date Issued**

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Susan Priest

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.