



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

Citation: Surotkin v Lunergan, 2024 ONLTB 22971

Date: 2024-04-02

File Number: LTB-L-048561-23

In the matter of: 4, 117 HENDON AVE
NORTH YORK ON M2M1A6

Between: Andrew Surotkin Landlord

And

Noah Lunergan Tenant

Andrew Surotkin (the 'Landlord') applied for an order to terminate the tenancy and evict Noah Lunergan (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 March 20, 2024.

Only the Landlord, Andrew Surotkin attended the hearing.

As of 9:53 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 in the application. Therefore, the tenancy shall be terminated in accordance with this order.
2. The Tenant was in possession of the rental unit on the date the application was filed.

2024 ONLTB 22971 (CanLII)

3. On April 19, 2023, the Landlord gave the Tenant an N5 notice of termination by placing the notice under the door of the rental unit, deemed served on April 19, 2024. The notice of termination contained the following allegations: 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 by virtue of failing to maintain their rental unit in a state of ordinary cleanliness.
4. The Landlord's witness testified that they live in the same residential complex as the Tenant and have resided in the residential complex for approximately 16.5 years. The witness testified that their rental unit is located on the same level as the Tenant (ground floor) and that their unit is within close proximity to that of the Tenant and that they share a common hallway with the Tenant.
5. The Witness testified that over the last 1.5 years they have noticed a serious issue in the Tenant's residence with respect to the presence of many fruit flies throughout the household as well as what they described as a very foul odor in the common areas of the residence, specifically in the common hallway. The Witness also testified that the fruit flies and foul odor from the Tenant's unit has worsened over time.
6. The Witness testified that they are negatively impacted by these conditions because they are embarrassed to have any company over due to the foul odor emanating from the Tenant's rental unit as well as the annoyance of the fruit flies generally throughout the rental complex.
7. The Landlord introduced multiple written statements from other Tenants in the rental complex into evidence. The Tribunal acknowledges many of the statements were with respect to complaints involving the Tenant, that are outside the scope of the issues raised in the notice of termination. As such, I did not consider the issues that were not outlined in the notice of termination.
8. The Landlord testified that they attended the rental unit on three separate occasions (March 3, 2023 / April 1, 2023 / April 16, 2023) prior to serving the Tenant with a notice of termination. The Landlord also testified that each time that they entered the unit they observed the unit to be filled with garbage, refuse, empty bottles and partially eaten food containers with rotting foods, which the Landlord stated attracted the fruit flies. The Tenant was given verbal warnings to clean up but, the Landlord testified, there was little to no improvement observed with respect to the state of the Tenant's unit over the course of the three attendances. Rather, it was the Landlord's evidence that the state of the Tenant's unit appeared to be worsening. The Landlord tendered as evidence photographs taken by the Landlord of the Tenant's rental unit at the times of the inspections in support of their position.
9. The Landlord testified that they attended the property to inspect the unit on May 2, 2023, to determine if the Tenant had taken any steps to void the notice of termination within the voiding period permitted. The Landlord testified that the Tenant had failed to void the notice, as the Landlord observed the unit to be the in the same state if not worse than at the time that the Tenant was served with the notice of termination.
10. The Landlord testified that the issue is intensified and worsens in the warmer months as the sun and heat make the odor overwhelming.

11. The Landlord testified that on approximately two occasions in December 2023 the Tenant's Parents attended the rental unit and assisted in having a lot of the garbage and food waste removed from the rental unit and the unit cleaned up.
12. The Landlord testified that within weeks of having the garbage removed and the unit cleaned on these two occasions, the Tenant allowed the unit to get back into the same state, filled with garbage, food waste and empty bottles as the Tenant does not appear to remove any garbage, waste, empty bottles or food remains from the unit.
13. The Landlord testified that they attended the unit as recently as March 2, 2024 and that they observed the unit to be in a deplorable state with garbage, food remains and empty bottles all throughout the unit. The Landlord also testified that the foul odor was still an ongoing issue as well.
14. The Tenant did not stop the conduct or activity or correct the omission within seven days after receiving the N5 notice of termination as outlined above. Therefore, the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).
15. The Tenant was required to pay the Landlord \$8,457.53 in daily compensation for use and occupation of the rental unit for the period from June 1, 2023 to March 20, 2024. The Landlord sought to withdraw this portion of their application as they have filed a separate application for arrears of rent. I consented to this request and as such the portion of the application seeking daily compensation to the day of the hearing shall be withdrawn.
16. Based on the Monthly rent, the daily compensation is \$28.77. This amount is calculated as follows: \$875.00 x 12, divided by 365 days.
17. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
18. The Landlord collected a rent deposit of \$875.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$39.38 is owing to the Tenant for the period from June 3, 2022 to March 20, 2024 .
19. 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.
20. The Landlord stated that they are seeking a standard order terminating the tenancy. The Landlord also stated that they were unaware of any circumstances that would require me to delay and/or deny termination of the tenancy.
21. 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 13, 2024 pursuant to subsection 83(1)(b) of the Act. I find this reasonable to allow the Tenant an opportunity to secure alternative accommodations.

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 13, 2024.

2. If the unit is not vacated on or before April 13, 2024, then starting April 14, 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 April 14, 2024.
4. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
5. The Landlord owes \$914.38 which is the amount of the rent deposit and interest on the rent deposit, and this shall be deducted from the amount owing by the Tenant.

April 2, 2024
Date Issued

Ilan Shingait
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 October 14, 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.