



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

Citation: TBDSSAB Housing Programs v Felteau, 2024 ONLTB 14619

Date: 2024-03-05

File Number: LTB-L-081704-22

In the matter of: 622, 230 AMELIA ST W
THUNDER BAY ON P7E6H2

Between: TBDSSAB Housing Programs Landlord
The District of Thunder Bay Social Services Administration Board

And

John Felteau Tenant

TBDSSAB Housing Programs and The District of Thunder Bay Social Services Administration Board (the 'Landlord') applied for an order to terminate the tenancy and evict John Felteau (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 January 31, 2024.

Only The Landlord's legal representative J. Fenton and Landlord's witnesses J. Petrin ('J.P') and P. Marin ('P.M') attended the hearing.

As of 10:00 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.

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

N5 Notice of Termination

- On December 13, 2022, the Landlord gave the Tenant a first, voidable N5 notice of termination alleging that the Tenant has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant by Tenant being verbally aggressive towards other tenants in the building and the Landlord's employees. Therefore, the Landlord was allowed to give the Tenant a second, non-voidable N5 notice of termination under section 68 of the *Residential Tenancies Act, 2006* (Act).
- On December 21, 2022, the Landlord gave the Tenant a second N5 notice of termination. The notice of termination contains the following allegations: There were 20 visitors came and went from the Tenant's rental unit around December 20 and December 21, 2022, between midnight and 8:00 a.m. has substantially interfered with the reasonable enjoyment or lawful right, privilege, or interest of the Landlord or other tenants.
- Subsection 68(1) says:

A landlord may give a tenant notice of termination of the tenancy if,

- a notice of termination was given to the tenant under section 62, 64 or 67; and*
- 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).*
[Emphasis added.]

- As can be seen from the wording of s. 68(1)(b) the details and particulars in a second notice of termination must concern events that occurred more than seven days but less than six months after the first notice is served.
- Since the 1st N5 was served on December 13, 2022, the incidents listed in the Landlord's 2nd N5, dated between December 14 and December 20, 2022, will not be taken into consideration.
- The Landlord's s. 68 notice here details incidents that occurred both within this period and after December 20, 2022. Given the wording of s. 68(1)(b) the hearing proceeded with respect to only the allegations that occurred on December 21, 2022.
- J.P, the Landlord's building manager, testified that the Landlord received multiple complaints from other residents in the building regarding the Tenant's guests entering and leaving the rental unit on or around December 21, 2022, between midnight and 8:00 a.m.

Approximately 20 visitors were involved. The resulting noises were disturbing to other tenants attempting to sleep. Additionally, J.P stated that additional tenants had complained about excessive traffic from the Tenant's rental unit and his guests, deeming it disruptive and an interference with their reasonable enjoyment.

10. P.M, tenant support worker, also provided evidence. She testified that the building comprises approximately 160 Rent-Geared-to-Income Housing ('RGI') units, and the majority of residents in the building come from homelessness or shelter systems, constituting a vulnerable population. P.M attested that the Tenant and his guests making loud noises and creating high traffic in the building has had a significant negative impact on the reasonable enjoyment of other tenants. She testified that having sent multiple warning letters to the Tenant and offered support in the past, but received no response from the Tenant.

11. Subsection 64(1) of the Act states:

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

12. Based on the uncontested evidence presented to the Board, and on a balance of probabilities, I find that the excessive traffic to the Tenant's rental unit and the Tenant's guests' conduct of making loud noise during the night has substantially interfered with the reasonable enjoyment or lawful right, privilege, or interest of the Landlord or other tenants.

Relief from Eviction:

13. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
14. At the hearing, J.P testified that other tenants in the building had contacted the local police on multiple occasions due to noise disturbances caused by the Tenant's guests. J.P further testified since the second N5 notice was served the Landlord has continued to receive additional complaints from other tenants regarding the Tenant or the Tenant's guests causing disturbances and generating loud noises within the residential complex. The Landlord's legal representative submitted five written complaint reports as evidence, dated on January 5, 2023, January 18, 2023, January 19, 2023, October 2, 2023, and November 11, 2023 indicating that the Tenant and his guests were making loud noise by having fights in the hallway, creating high traffic in the rental unit, and engaging in disruptive behavior such as yelling and shouting. J.P also testified that the ongoing conduct of the Tenant and his guests significantly impacts the other tenants in the complex.

15. The Landlord's legal representative requested a standard order terminating the tenancy between the Landlord and the Tenant, citing the ongoing and continuous nature of the behavior since the filing of the application.
16. The Tenant was not present at the hearing to provide evidence regarding his circumstances.
17. P.M testified that they are not aware of any circumstances of the Tenant to warrant a finding that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
18. Due to the ongoing nature of the Tenant's behavior and the complaints, I find that termination of the tenancy is appropriate in this case.
19. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
20. There is no last month's rent deposit.

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 March 16, 2024.
2. If the unit is not vacated on or before March 16, 2024, then starting March 17, 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 March 17, 2024.
4. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing on or before March 16, 2024, the Tenant will start to owe interest. This will be simple interest calculated from March 17, 2024 at 7.00% annually on the balance outstanding.

March 5, 2024

Date Issued

Joy Xiao

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.

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In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on September 17, 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.

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