



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

Citation: Signet Group Inc v Oakley, 2024 ONLTB 62358

Date: 2024-08-29

File Number: LTB-L-002877-24

In the matter of: 2A, 80 ADELAIDE ST
KITCHENER ON N2M2B6

Between: Signet Group Inc Landlord

And

Lukas Gardner Oakley Tenant

2024 ONLTB 62358 (CanLII)

Signet Group Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Lukas Gardner Oakley (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 August 15, 2024.

Only the Landlord’s representative Matt Anderson attended the hearing. Nicole Hottot and Victoria Kent and Lorraine Fisher attended as witnesses for the Landlord.

As of 9:43 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.

It is determined that:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, **the tenancy will be terminated on September 9, 2024.**
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On October 3, the Landlord gave the Tenant a first, voidable N5 notice of termination. (“**First N5**”). In the First N5 the Landlord alleges that the Tenant substantially interfered with the reasonable enjoyment of the residential complex by the Landlord and the other Tenants because on February 26, 2024 at 11:25 p.m. the Tenant was revving his vehicle, honking his horn and yelling back and forth with his girlfriend’s daughter in the rental unit

and swearing. The Tenant, on April 7, 2024 at 10:50 a.m. was swearing at Ms. Victoria Kent, smoking marijuana close to other Tenant's units which caused cannabis smoke to enter their units. 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).

4. On December 8, 2023, the Landlord gave the Tenant a second N5 notice of termination. ("**Second N5**"). The grounds for the Second N5 are substantial interference with the reasonable enjoyment of the residential complex and rental units by the Landlord and the other tenants, by yelling, causing engine noise, swearing, smoking cannabis near the rental units, storing gas powered vehicles, gasoline tanks and other personal property and garbage close to the residential complex, in the exterior space in front of the Tenant's rental unit.
5. Victoria Kent is the tenant directly above the Tenant's basement unit. Her balcony is a short 4 or 5 feet from the ground. She testified to several occurrences which were included in the N5:
 - a) On October 22, 2023 at 2:40 p.m., an occupant or guest of the Tenant's named 'Jeff' was directly in front of her balcony on the lawn of the rental unit yelling and swearing and smoking marijuana. The cannabis smoke was entering her unit through the windows. Ms. Kent testified that the Tenant has no balcony or door in that location, but sometimes crawls through the window to exit below her balcony.
 - b) On October 25, 2023 the Tenants and his friends were riding their motorbikes outside on the front lawn. They were smoking marijuana. On that date there was garbage and other items being stored beneath her balcony such as a broken chair, garbage and a lawn mower. The Tenant testified that the lawn mower is unnecessary because the Landlord provides law care services to the building. The Tenant stores the bikes and gasoline under the balcony and fixes his bikes in front of the balcony. On that date the smell of gasoline and cannabis was entering her unit.
 - c) On October 26, 2023 the 'Jeff' came home with his friends on their bikes and were hanging out again in front of her balcony and again 'taking over the front yard'. Ms. Kent had to close her windows again because her unit filled with the smell of gasoline.
6. At the hearing the Landlord's representative produced a copy of the Tenant's tenancy agreement dated September 1, 2017. Lorraine Fisher testified at the hearing that the *Schedule A Rules and Regulations* of the tenancy agreement at paragraph C(4) and C(5) state:
 - C4. "Balconies shall not be used for storage..."
 - C5. "The Tenant agrees not to place or store any recreational vehicles or objects such as bicycles, baby carriages, toys, floor mats on or about the building".
7. Although the space below Victoria Kent's balcony is not a 'balcony', I find that it is the exterior space in front of the Tenant's windows and is reasonably meant to be captured by section C4 above. Based on the restrictions in the tenancy agreement I find that the

Tenant substantially interfered with the Landlord's lawful right to compliance with the agreement by storing bikes, gasoline tanks, debris and other items in that space.

8. I also note that section C9 states the Tenant shall not make or permit to be made by the Tenant's family, visitors or pets any noise of any kind, which may disturb any other occupant of the building. The Tenant's and his guests yelling, swearing, and engine revving is clearly disturbing the other occupants of the building.
9. The impact of the Tenant's conduct on Ms. Kent is substantial. She experiences regular headaches from the smoke and gasoline fumes. She is disturbed by the yelling and swearing, which cannot be stopped by closing her windows or doors. She doesn't feel safe with the groups of people regularly hanging out directly in front of her balcony and the constant bad language, revving and disruption.
10. Based on the evidence produced at the hearing and the oral testimony given to me, I find that the Tenant's conduct has substantially interfered with the Landlord's and the other tenants' reasonable enjoyment of the residential complex and the Landlord's lawful right, privilege or interest.

Daily compensation, rent deposit

11. At the hearing the Landlord requested to withdraw their claim for daily compensation because they had recently filed an L1 application for non-payment of rent. I consented to the withdrawn of that claim.
12. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
14. Since the allegations testified to above, the Tenant has continued to store his motorbikes and debris under the balcony, fix the bikes in front of the Tenant's balcony, store gasoline in that location, and continue to hang out in front of the balcony, such that the smell of marijuana and gasoline enters her rental unit nearly daily. Similar incidents occurred continuously from October, 2023. More recently on August 14, 2024 a group of the Tenant's friends were hanging out in front of her balcony, smoking, yelling and swearing.
15. Ms. Kent and another tenant, Nicole Hottot also testified that on August 8, 2024 a man was found sleeping overnight in the stairwell near the Tenant's door and police were called. He exited and began sitting in front of the Tenant's windows below Ms. Kent's balcony where the Tenant and his friends hang out. Nicole Hottot, also testified that the constant noise is very disruptive with constant noise all hours of the day and night. The smell of gasoline reaches her apartment at times. She provided evidence that as recently as August 6, 2024 the hallways smelled of gasoline and that sometimes the Tenant works on his gas-powered bikes inside the building which leads to the odour.

16. Due to the continuing behavior and no indication that it has altered or ceased it would not be unfair to the Landlord to grant relief from eviction.

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 September 9, 2024.
2. If the unit is not vacated on or before September 9, 2024, then starting September 10, 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 September 10, 2024.
4. The Tenant shall 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 September 9, 2024, the Tenant will start to owe interest. This will be simple interest calculated from September 10, 2024 at 7.00% annually on the balance outstanding.

August 29, 2024
Date Issued

Julie Broderick
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 March 10, 2025 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.