



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

**Citation:** ER Property Rentals Inc. v Zaporojanu, 2024 ONLTB 28341

**Date:** 2024-04-29

**File Number:** LTB-L-057071-23-HR

**In the matter of:** 908, 34 LEITH HILL RD  
NORTH YORK ON M2J1Z4

**Between:** ER Property Rentals Inc. Landlord

**And**

Romica Zaporojanu Tenant

2024 ONLTB 28341 (CanLII)

ER Property Rentals Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Romica Zaporojanu (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 Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has willfully or negligently caused damage to the premises.

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

ER Property Rentals Inc. (the 'Landlord') also applied for an order requiring Romica Zaporojanu (the 'Tenant') 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 caused willfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

This application was heard by videoconference on April 10, 2024.

Only the Landlord and the Landlord's representative Kristen Ley attended the hearing.

As of 9:47 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 and the claim for compensation in the application. Therefore, eviction is granted.
2. The Tenant was served an N5 notice of termination on July 10, 2023 with a termination date of July 31, 2023. The notice of termination contains the following allegations:
  1. Tenant has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant through the following conduct:
    1. Inoperable abandoned car in the parking lot;
    2. Fire Hazard due to cluttering;
    3. Smoking in the rental unit contrary to the rules; and
    4. Excessively cluttering the balcony so as to attract pigeons and their excrement.
  2. Through excessive clutter and attracting the pigeons the Tenant willfully or negligently caused undue damage to the rental unit or residential complex.
3. The Tenant was in possession of the rental unit on the date the application was filed.
4. I will deal with each allegation in turn.

*Abandoning a car in the parking lot.*

5. The Landlord provided evidence that the Tenant's car was left inoperable in the residential complex parking lot. Their right, privilege and interest was substantially interfered with contrary to the Tenancy Agreement dated June 7, 2007 at paragraph 14(a)(ii), because the car had four flat tires, was clearly abandoned or inoperable. The Tenancy Agreement only gives the Tenant the right to park an operable vehicle in a designated spot.
6. The Tenant was spoken to about the vehicle again on July 17, 2023. The Tenant did not remove the car within 7 days of the notice of termination being served, and thus did not void the N5 notice in accordance with section 64(3) of *Residential Tenancies Act, 2006* (the 'Act').
7. As of the hearing date the Tenant has done nothing to correct the situation.
8. I am satisfied the Landlord has proven the Tenant substantially interfered with the lawful right, privilege or interest of the Landlord or another tenant by leaving his car inoperable in the parking lot contrary to the Tenancy Agreement.

*Fire Hazard Conditions due to Clutter.*

9. The Landlord provided photos of the unit taken by the Landlord and the cleanup company hired to clean the balcony. These photos were taken at several times throughout 2023. The photos show an excessive level of clutter throughout the unit and balcony, piled high

with narrow paths to walk. The Kitchen photos showed electronics, carts piled with debris, garbage and clutter all over the countertops, the stove surface and floor, with little space to walk. The Landlord submits the level of clutter, paint cans, combustibles and blockage of movement create a fire hazard for the Tenant and the rest of the building occupants.

10. Due to a fire previously in the building the Landlord is attentive to fire concerns. Section 14(b) of the Tenancy Agreement prohibits the Tenant to do anything that will create a risk of fire or rate of fire insurance. Section 14(h) requires the balcony to be kept in a neat and tidy condition.
11. The Tenant was advised by letter and in person on a monthly basis starting on April 24, 2023 and also several times throughout 2023 but the Tenant did nothing to remedy the situation. In July the situation remained the same. The Tenant did not reduce the clutter within 7 days of the notice of termination being served on July 5, 2024, and thus did not void the N5 notice in accordance with section 64(3) of the Act.
12. On November 6, 2023 the Tenant advised the Landlord he recently suffered a broken hip and would be unable to take action for at least 8 weeks but was 'renovating' and would get to it.
13. As of April 3, 2024, just prior to this hearing, no action was taken by the Tenant. Photos taken on April 3, 2024 by the Landlord show the same objects present, piled paint cans and combustible objects completely covering the stove. The Landlord testified he saw no signs of renovation the Tenant claimed was happening.
14. In each letter and at each visit the Landlord offered to assist the Tenant to clear the clutter. The Tenant did not take the Landlord's offer.
15. I am satisfied the Landlord has proved on a balance of probabilities that the Tenant interfered substantially interfered with the lawful right, privilege or interest of the Landlord or another tenant through excessive clutter of the rental unit and balcony causing a safety and fire risk to the Landlord and other Tenant's of the building.

*Smoking contrary to the Tenancy Agreement.*

16. The Landlord submits the Tenant is a smoker, and a strong odor of tobacco smoke emanates from the Tenant's unit regularly. Within the unit the smell and signs of smoking such as ashtrays and cigarette butts are present.
17. The Tenancy Agreement does not specifically permit or prohibit smoking. The Tenant lived in the unit since June 7, 2007, and presumably smoked in the unit the entire time.
18. The Landlord made efforts to transition the building to non-smoking in 2020. A letter was delivered to all tenants on November 20, 2020, advising that as of January 1, 2020 the building would become non-smoking. The Landlord later warned the Tenant on each occasion he inspected the unit. Each warning letter to the Tenant also warned of the smoking prohibition.

19. The Tenant did not remedy to issue within 7 days of the notice of termination being served on July 5, 2024. Smoking was still evident on July 17, 2024.
20. In support of the change in rules, the Landlord relies on section 14(v)(iv) in the Tenancy Agreement which states that "*The Tenant covenants and agrees to comply with each of the rules and regulations herein and, upon notice, any additions or amendments thereto*". A copy of the Tenancy Agreement was entered into evidence by the Landlord.
21. The Landlord provided no evidence that other Tenants complained about the smoking or negatively impacted the Landlord or other Tenants other than odour, which I find does not rise to the level of substantial interference.
22. I therefore find that, although the Landlord's "right, privilege or interest" in establishing a new non-smoking rule was lawful, on a balance of probabilities, the Landlord did not prove substantial interference by the Tenant with the lawful right, privilege or interest of the Landlord or another tenant by smoking in his residential unit.

*Pigeons and Garbage contamination*

23. The Landlord claimed the clutter and contamination on the balcony substantially interfered with other Tenants' reasonable enjoyment of their own balconies, and the Landlord's right to have Tenants keep their balconies clean and in compliance with the Tenancy Agreement.
24. The Landlord also claimed the balcony clutter, pigeon nesting and excrement caused undue damage to the balcony as all items stored on the balcony were covered in pigeon excrement and nest materials.
25. On May 15, 2023, a tenant complained about the pigeon droppings on the balcony falling onto her own balcony from the rental unit and had concerns about her children's safety to due to the mass quantity. They could not sit outside or use the balcony. The Landlord submitted photos taken of the rental unit's balcony on several of the inspections throughout 2023 showing an excess level of clutter, shelving, organic material, straw, nests, and bird feces contamination.
26. On July 5, 2023, Canadian Hazmat Decon Services Inc, a biohazard clean up company, came into the rental unit to clean the balcony at a cost to the Landlord of \$2,147.00. The balcony was cleared of objects and sanitized.
27. The Landlord, at their own expenses installed netting around the balcony to prevent the birds from returning. The balcony photos show before and after. After photos show the balcony empty and clean.
28. Section 14 (h)(iii) of the Tenancy Agreement requires the balcony to be kept in a clean and neat condition.

29. On April 3, 2024 shortly before this hearing, the Landlord attended the unit again to inspect. The balcony was again full of clutter and garbage.
30. I find the Tenant was properly informed of the requirement to keep the balcony in a clean condition. I also find the Tenant did not reduce the clutter on the balcony nor clean the excrement and nests within 7 days of the notice of termination being served on July 5, 2024, and thus did not void the N5 notice in accordance with section 64(3) of the Act.
31. I am satisfied the Landlord has proven on a balance of probabilities that the Tenant caused undue damage to the balcony and substantially interfered with the lawful right, privilege or interest of the Landlord or another tenant by cluttering the balcony with garbage and combustibles which attracted pigeons and causing contamination.

### Compensation for damages

32. The Landlord also requested an order that the Tenant pay the Landlord's reasonable out-of-pocket costs the Landlord incurred to repair or replace undue damage to the balcony.
33. Based on all the evidence before me I find the Tenant willfully or negligently caused undue damage to the balcony of the unit.
34. The Landlord has incurred reasonable costs of \$2,147.00 to have Canadian Hazmat Decon Services Inc. clean and sanitize the balcony.
35. The Landlord acknowledged that rent was paid up to April 30, 2024, so the claim for daily compensation up to the hearing date is dismissed.
36. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
37. The Landlord collected a rent deposit of \$1,477.35 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$26.61 is owing to the Tenant for the period from July 23, 2023, to April 10, 2024.

### No Relief from Eviction

38. I have considered all 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 the Tenant relief from eviction pursuant to subsection 83(1) of the Act. The Tenant was not present at the hearing.
39. Although the Tenant suffered a broken hip in November of 2023 there was no evidence presented to suggest he is not now sufficiently mobile to move. The Landlord submitted they continue to offer help to the Tenant to remove and clean up the unit.

### **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 May 10, 2024.

- 2. If the unit is not vacated on or before May 10, 2024, then starting May 11, 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 May 11, 2024.
- 4. The Tenant shall also pay the Landlord compensation of \$47.39 per day for the use of the unit starting May 1, 2024 until the date the Tenant moves out of the unit.
- 5. The Tenant shall pay to the Landlord \$2,147.00, which represents the reasonable costs of repairing the damage or replacing the damaged property.
- 6. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
- 7. The Landlord owes \$1,503.96 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Tenant.
- 8. The total amount the Tenant owes the Landlord is **\$829.04**
- 9. If the Tenant does not pay the Landlord the full amount owing on or before May 10, 2024, the Tenant will start to owe interest. This will be simple interest calculated from May 11, 2024 at 7.00% annually on the balance outstanding.

**April 29, 2024**  
**Date Issued**

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 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 November 4, 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.