



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

Citation: Rayner v Pidgeon, 2024 ONLTB 26414

Date: 2024-04-18

File Number: LTB-L-078468-22

In the matter of: 5, 242 WORTHINGTON ST W
NORTH BAY ON P1B3B4

Between: Mendes Rayner Landlord

And

Terry Pidgeon Tenants
Zoe Southern
Ken Furgeson

Mendes Rayner (the 'Landlord') applied for an order to terminate the tenancy and evict Terry Pidgeon, Zoe Southern and Ken Furgeson (the 'Tenants') because:

- the Tenants, another occupant of the rental unit or a person the Tenants permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex.

This application was heard by videoconference on November 28, 2023.

The Landlord, The Landlord's Legal Representative, B. Parsons, and the Landlord's Witnesses, R. Alborough, M. Pietrantonio and M. Mendes attended on behalf of the Landlord. The Tenants and the Tenants' Legal Representative, S. Bailey attended the hearing on behalf of the Tenants.

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. However, I grant relief from eviction pursuant to subsection 83(1)(a) and 204(1) of the Act.
2. The Tenants were in possession of the rental unit on the date the application was filed.

3. On November 1, 2022, the Landlord gave the Tenants an N7 notice of termination. The notice of termination contains the following allegations:
4. On December 16, 2021, the Landlord performed a pest control treatment for bedbugs pursuant to a Notice of Termination served on December 15, 2021. The Landlord alleges in the notice of termination that the Tenants did not prepare the unit until after the technician arrived to treat the rental unit. The Landlord also alleges the Tenants re-entered the unit despite continued warnings from the technicians and that treatment ceased as a result. The Landlord alleges that at least three Tenants were affected due to bedbugs in the Tenants' unit.
5. The Landlord alleges that they served the Tenants with notices of entry for May 6, 2022, May 22, 2022, July 22, 2022, September 22, 2022, and October 12, 2022 to treat the unit for bedbugs. The Landlord alleges the Tenants agreed to notices of treatment and to follow the preparation documents provided over 24 hours prior to the entry for treatment. The Landlord alleges that the Tenants failed to prepare the unit for the pest control treatments.
6. The Landlord alleges that on May 6, 2022, the Tenants refused to leave the unit for treatment. The Landlord further alleges that on May 6, 2022, the Tenants left garbage, food stuffs, debris, and unlaundered clothing scattered over 50% of the rental unit. The Landlord alleges that the unit could not be successfully treated as a result of the Tenants' lack of preparation of their unit for the treatment.
7. The Landlord further alleges that on July 22, 2022, the Tenants stored explosive and flammable materials in the home which were not removed or disclosed prior to the heat treatment. The Landlord alleges that the technicians found the flammable and explosive materials before a potential explosion which the Landlord alleges could have caused severe damage and possibly death to the technicians and other Tenants.
8. The Landlord alleges that the failure to prepare the rental unit has caused other Tenants to move out of the residential complex and has endangered the lives of the technicians and the other Tenants at the residential complex.
9. The Landlord also alleges that there have been six treatments of the rental unit causing the Landlord to incur costs to treat the unit of over \$7,000.00.
10. At the hearing, the Landlord testified that they provided instructions for preparation of the rental unit for heat treatments before each entry to treat the unit for bedbugs, which included removing explosive or flammable items and a requirement for the Tenants to be out of the rental unit for at least six hours following the heat treatment. Documentary evidence was provided to support the claim that the Landlord provided the information required to the Tenant.
11. The Landlord testified that as the unit was not prepared before treatments and due to the level of items in the unit, they are unable to assess what items are stored in the unit and if they pose a risk to the safety of the Landlord's staff or other tenants in the residential complex.
12. At the hearing, the Landlord's Witness, MP, a pest control technician, testified that the Tenants have repeatedly failed to follow the instructions required for successful treatment

of the bedbugs. MP testified that on July 22, 2022, he found flammable and explosive materials in the rental unit during a heat treatment of the rental unit. More specifically, these items included two propane cannisters, a can of paint, and a bottle of gear oil. MP testified that the materials could have caused severe damage to the building and injury or death of the pest control technicians present or other Tenants in the residential complex.

13. The Landlord's Witness, RA testified that he has given four or five notices to the Tenants for pest control treatments in the rental unit. RA testified at the hearing that in addition to serving the notices of entry and preparation instructions for the treatments, he reviews the documents and requirements for preparation with the Tenants.
14. The Tenants testified that they were never made aware of the requirement to remove all flammable and explosive items from the rental unit prior to the heat treatment. Moreover, the Tenants also testified that the reason he had re-entered the unit during pest control treatments was because the pest control technicians or the Landlord asked the Tenants to return to remove any hazardous material from the rental unit.
15. I favour the evidence of the Landlord that the Tenants were given adequate notices of entry as well as information on how to prepare the rental unit. I find that on a balance of probabilities, the Tenants were given detailed instructions on how to prepare the rental unit.
16. In *Furr v. Courtland Mews Cooperative Housing Inc.*, 2020 ONSC 1175 at paragraph 17, the Divisional Court confirmed that a serious impairment of safety does not need to involve someone actually being hurt, but also can include the following:
 - i. The potential for an outcome that has the risk of a substantial negative effect on a person's wellbeing;
 - ii. A foreseeable act or omission that could result in or may result in serious impairment of safety; and
 - iii. The action or omission could easily result in a safety hazard.
17. While documentary evidence and oral testimony was provided at the hearing that the Landlord had incurred significant costs to treat the rental unit for bedbugs and that the Tenants failed to properly prepare the rental unit for treatments, I do not find that these issues seriously impaired the safety of other tenants, the Landlord, or the Landlord's staff. Insufficient evidence was led to suggest that the lack of preparation or treatment as a result of the lack of preparation caused a risk or serious impairment to the safety of other residents at the building.
18. However, I accept the Landlord's evidence that the Tenants kept potentially flammable or explosive materials in the rental unit. The Tenants ought to have known that keeping flammable or explosive items in the rental unit during a heat treatment of the unit could have caused a serious impairment of safety even if the outcome did not result in harm to anybody on the residential complex. While there was no report of flames or explosion, the presence of the flammable or explosive items in the rental unit clearly posed a serious hazard to safety not only for the Landlord's staff but to other residents. I find that while the Tenants' careless action did not result in flames, explosion, or an injury, it could have resulted in physical harm; and it therefore in my view the Tenants seriously impaired the safety of the Landlord's staff and other residents of the building.

19. The Tenants have seriously impaired the safety of other tenants or the Landlord's staff by storing flammable and explosive items in the rental unit during a heat treatment of the unit for bedbugs. This conduct occurred in the residential complex.
20. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
21. However, I must further consider an appropriate remedy. 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 grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

The Tenants' income sources are Ontario Works, Ontario Disability Support Program, and Employment Insurance. The Tenants have resided in the rental unit for approximately 8 years. A conditional order requiring that the Tenants comply with the requirements for pest control treatments would allow the Tenants an opportunity to preserve their tenancy, and would not be unfair because if they fail to do so the Landlord can move for eviction under section 78 of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenants continues if the Tenants meet the conditions set out below.
2. For the duration of the tenancy, the Tenant shall not impair a person's safety at the residential complex, including but not limited to by failing to adequately prepare the unit by not removing flammable or explosive materials prior to heat treatments.
3. If the Tenants fail to comply with the conditions set out in paragraph 2 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenants. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenants.
4. The Tenants shall pay to the Landlord \$186.00 for the cost of filing the application.
5. If the Tenants do not pay the Landlord the full amount owing on or before April 23, 2024, the Tenants will start to owe interest. This will be simple interest calculated from April 24, 2024 at 7.00% annually on the balance outstanding.

April 18, 2024

Date Issued

Christopher Lin

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.