



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

Citation: Parry Sound District Housing Corporation v Smith, 2024 ONLTB 22352

Date: 2024-03-28

File Number: LTB-L-005848-23

In the matter of: 306, 22A BELVEDERE AVE
PARRY SOUND ON P2A2A1

Between: Parry Sound District Housing Corporation Landlord

And

Richard Smith Tenant

Parry Sound District Housing Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Richard Smith (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.

The Landlord's Legal Representative, Kelly Draycott and an Employee of the Landlord, Tahlia Holm attended the hearing.

As of 9:35 am, 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.

Preliminary Issue:

1. There is an allegation on the 2nd N5 Notice of Termination that occurred on December 2, 2022 that alleges that the Tenant has been exposing himself and demonstrating profanity and vulgar disrespectful acts into the security cameras.
2. The First N5 was served to the Tenant on November 22, 2022, by Xpress Post, deemed served on November 27, 2023. The Tenant had an opportunity to void this notice with a 7-day voiding period from November 28, 2022 to December 4, 2022.
3. The allegations on the second N5 for December 2, 2022, fall within the voiding period of the first N5, therefore will not be considered.

4. Therefore, the allegation on the 2nd N5 notice for December 28, 2022, will be the allegation considered under this application.

Determinations:

5. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, I will be issuing a conditional order.
6. The Tenant was in possession of the rental unit on the date the application was filed.
7. The tenancy began July 1, 2020.

First and Second N5 Notice of Termination-Substantial Interference

8. On November 22, 2022, the Landlord served the Tenant an N5 notice of termination by Xpress Post, deemed served on November 27, 2022. The notice of termination contains the allegation that the Tenant has left his cat unattended in the hallway and the cat was defecating on another tenant's doorstep and that there is a strong smell emanating from the Tenant's rental unit and throughout the hallway as a result of the Tenant's cat wandering the hallway of leash and spraying throughout the hallway.
9. The N5 notice gave the Tenants an opportunity to void the notice within 7 days by stopping the activity or correcting the behaviour.
10. On December 29, 2022, the Landlord served the Tenants with a second non voidable N5 notice of termination by Xpress Post, deemed served on January 3, 2023. The termination date in the notice was January 17, 2023. I am satisfied that the N5 notice was properly served and complied with section 64 of the *Residential Tenancies Act, 2006* ('Act').
11. The second N5 notice provided the Tenant with sufficient details regarding the allegations the Tenant is exposing himself, demonstrating profanity and vulgar disrespectful acts toward the security cameras. However, only the allegation from December 28, 2022, related to the Tenant demonstrating profanity and vulgar disrespectful acts into the security camera will be considered.

Landlord's Uncontested Evidence

12. The Landlord's Employee, Tahlia Holm testified that she is the Supervisor of Tenant Services.
13. The Landlord provided a photograph from the security footage dated December 28, 2022, that showed the Tenant in the hallway giving the middle finger directly to the security camera.
14. The Landlord's employee, Talia Holm testified that the issue with the Tenant is ongoing.

15. The Landlord provided a video from the security footage dated June 1, 2023, January 4, 2023, February 2, 2023, May 27, 2023, May 29, 2023, May 30, 2023, and May 31, 2023, that shows the Tenant in the hallway outside of his rental unit where gives the middle finger directly to the security camera.
16. Talia Holm testified that the Tenants behaviour continues to escalate.
17. She testified that she has reached out to the Tenant and the Tenant has no interest in speaking with the Landlord and instead uses profanities toward the Landlord and staff. She states that she believes a letter was sent to the Tenant regarding his behaviour and that they have had telephone conversations with the Tenant that were met with denial and aggression.

Analysis

18. On the basis of the Landlord's uncontested evidence, I find that the Tenant has substantially interfered with the Landlord's and other tenants reasonable enjoyment and/or the Landlord's lawful rights, privileges or interests by using acts of profanity directed toward the Landlord by giving the middle finger to the security camera. I find that the Tenant is directing these acts of profanity directly to the Landlord as the Tenant knows that the Landlord monitors the security cameras.
19. This conduct has a negative impact on the Landlord and the Landlord's staff and is inappropriate behaviour directed toward the Landlord and the Landlord's staff.

Relief from Eviction

20. 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 pursuant to subsection 83(1)(a) of the Act. I find that it would not be unfair to provide the Tenant with an opportunity to correct the behaviour.

It is ordered that:

1. The Landlord's application for eviction of the Tenant is denied on that condition that the Tenant shall:
 - a) Refrain from any inappropriate behaviour or acts of profanity directed to the security camera included but not limited to giving the middle finger to the security camera.
2. The conditions set out in Paragraph 1(a) will be in place for a period of one year from the date of this order.
3. On or before April 4, 2024, the Tenant shall also pay the Landlord \$186.00 for the cost of filing this application.

4. If the Tenant does not pay the Landlord the full amount owing on or before April 4, 2024, the Tenant will start to owe interest. This will be simple interest calculated from April 5, 2024 at 7.00% annually on the balance outstanding.
5. If the Tenant fails to comply with the conditions set out in paragraph 1(a) 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 Tenant. 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 Tenant.

March 28, 2024
Date Issued

Trish Carson
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.