



Order under Section 69

Residential Tenancies Act, 2006

Citation: Pal Property Solutions v Voutour-warner, 2024 ONLTB 20368

Date: 2024-03-21

File Number: LTB-L-049809-23

LTB-L-048512-22

In the matter of: Unit 2, 183 PROSPECT ST S HAMILTON
ON L8M2Z5

Between: Pal Property Solutions Landlord

And

Alexandria Voutour-warner Tenant

Pal Property Solutions (the 'Landlord') applied for an order to terminate the tenancy and evict Alexandria Voutour-warner (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (L1 Application).

The Landlord also applied for an order to terminate the tenancy and evict the Tenant because the Tenant persistently paid the rent late and they or someone visiting or living with them had substantially interfered with another tenant's and or the Landlord's reasonable enjoyment of the residential complex, and or lawful rights and privileges (L2 Application).

This application was heard by videoconference on March 7, 2024, at 09:00 am.

Only the Landlord Representative Andrew Choubeta and the Landlord Agent Kaely Pal attended the hearing.

As of 09:30 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.

Determinations:

L1 Application

1. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$1,160.74. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$38.16. This amount is calculated as follows: \$1,160.74 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to March 31, 2024 are \$1,179.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$1,100.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
9. Interest on the rent deposit, in the amount of \$109.55 is owing to the Tenant for the period from January 1, 2018 to March 7, 2024.

L2 Application

10. The Landlord has proven on the balance of probabilities the grounds for the termination of the tenancy and claims for compensation.

Persistent late payment

11. The Landlord Representative submitted that the Tenant paid the rent late a total of eight times between 2021 and 2022 to include October 2021, November 2021, June 2022, July 2022, August 2022 and September 2022. This was supported by a copy of the Landlord's ledger and the N8 Notice to terminate the tenancy (N8 Notice), deemed served on December 16, 2022, with a termination date of February 28, 2023, both entered in evidence.
12. Based on the uncontested evidence and testimony before me, I am satisfied that the Landlord has proven the Tenant has persistently paid the rent late.

Substantial interference

13. The Landlord Agent Kaley Pal (KP) testified that early in 2022 they began receiving complaints about cigarette smoke and noise from the other tenants in the building. She then testified that following repeated verbal warnings and the Tenants failure to correct

these issues they served the first N5 Notice to terminate the tenancy (N5 Notice), deemed served April 6, 2022 with a termination date of April 30, 2022. The N5 Notice alleged that:

- a. On April 3, 2022, the tenant residing in unit 2, above the rental unit, complained of a strong smell of cigarette smoke emanating from the rental unit along with excessive screaming, yelling and stomping causing a disruption to the other tenants reasonable enjoyment;
 - b. On April 4, 2022, the tenant in unit 2 again could smell excessive cigarette smoke, causing nausea. The tenant in unit 2 also heard a violent altercation from within the rental unit, forcing them to fear for their safety and to call the police who were dispatched to investigate at 4:00 pm;
 - c. On April 5, 2022, the tenant in unit 2 again could smell excessive cigarette smoke and heard loud noises, disrupting their ability to work.
14. KP testified that the Tenant failed to void the first N5 Notice as they continued to receive complaints after April 13, 2022. She further testified that in July 2022 they began to receive several complaints from the Tenant and other tenants regarding the plumbing. Upon investigation by a plumber on July 13, 2022, it was discovered that the cause of the disruption was due to the Tenant flushing several feminine hygiene products down the toilet. Pictures of the hygiene products pulled from the toilet on July 7, 2022, were entered in evidence.
15. KP then testified that they received another complaint on July 15, 2022, prompting them to send the plumber again. As was the case on July 13, 2022, it was determined on July 17, 2022 that the cause was the Tenant disposing of feminine hygiene products. This was again supported by pictures of the products being pulled out of the toilet by the plumber on July 17, 2022. She also testified that the plumber determined that given the number of items being flushed it was more likely than not deliberate. This prompted an email to be sent to the Tenant on July 18, 2022, advising them of the plumbers' findings and warning them to prevent future incidents. The total cost, as supported by invoices entered for the plumbing maintenance was \$3,000.00.
16. She then testified that on July 22, 2022, an agent of the Landlord along with contractors who were sent for garbage removal. It was noted on this visit that excessive cigarette smoke could be smelled and again the Tenant was advised to not continue to smoke inside the unit.
17. She further testified that on August 8, 2022, she received a phone call from Hamilton ByLaw enforcement who stated that they received a complaint that the back door to the rental unit was boarded over, that the Landlord was aware and refused to do anything. She testified that the Tenant never informed them of an issue with the back door. She then testified that By Law enforcement informed her that they discovered reported that there

was a large pile of refuse on the porch, causing an obstruction to enter and leaving the property. She testified that following the phone call she attended the property and saw firsthand the damaged door and debris piled up outside the Tenants unit as claimed. A picture of the door and debris was entered in evidence. She testified that she informed the Tenant that they had to remove it and provided additional garbage bags. She also testified that the cost to replace the door was \$1,000.00 as supported by a quote entered in evidence.

18. KP testified that they attended the property again on August 10, 2022 and discovered that the Tenant had made no attempt to remove the debris as advised. Following this, on August 17, 2022 they received complaints of mice in unit 2, prompting the employment of traps again requesting that the Tenant remove the debris. A follow-on inspection conducted on August 18, 2022 determined that the Tenant again failed to comply.
19. KP testified that following the August 18, 2022, inspection they served the second N5 Notice, deemed served August 24, 2022, with a termination date of September 8, 2022. A copy of the N5 Notice was entered in evidence. The Notice alleged all the events that KP testified to commencing with the plumbing issues as of July 13, 2022.
20. KP further testified that the Tenant's failure to comply with the N5 Notices led to the tenants in unit 2 requesting to terminate their tenancy early. This was supported by a letter from the tenants in unit 2 to the Landlord stating that due to the Tenants behaviour they could no longer reside at the rental complex. KP testified that she believed that such incidents would continue should the Tenant remain at the rental unit as the Tenant has continued to conduct themselves as alleged.
21. The remedies sought by the Landlord are as follows:
 - a. Termination of the tenancy;
 - b. Reimbursement for the cost of plumbing maintenance conducted, totalling \$3,000.00; and
 - c. Reimbursement for the cost to replace the door, totalling \$1,000.00.

Costs

22. The Landlord Representative testified that leading up to the hearing he had personally attended the rental unit to deliver disclosure, to include a copy of the Notice of Hearing (NOH). He also testified to attempting to engage the Tenant at the time the N5 Notice was served in order to possibly come to a consent agreement, but the Tenant refused. Given the time, effort and genuine intent to resolve these issues before coming before the Board, the Landlord Representative requested that costs be ordered against the Tenant.

Analysis

23. The following sections of the Residential Tenancies Act, 2006 (the “Act”) are relevant to this application:

Termination for cause, reasonable enjoyment

64 (1) 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.

Notice of termination, further contravention

68 (1) A landlord may give a tenant notice of termination of the tenancy if,

- (a) a notice of termination was given to the tenant under section 62, 64 or 67; and
- (b) 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).

24. Based on the uncontested testimony and evidence, I am satisfied that the Tenant not only failed to void the first Notice of termination but was in further contravention pursuant to section 68. I based this on KP testimony and the photographic evidence entered, namely that of the continued smoking and the pictures of feminine products retrieved from the toilet, the damaged door and debris on the porch entered in evidence.

25. Furthermore, I am also satisfied that the Landlord has established that they did incur out of pocket expenses as a result of the Tenants actions and are entitled to be reimbursed for those costs as follows:

- a. Reimbursement for the cost of plumbing maintenance conducted, totalling \$3,000.00; and
- b. Reimbursement for the cost to replace the door, totalling \$1,000.00.

Relief from eviction

26. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
27. Specifically, Given the persistent late payment of rent, continued behaviour of the Tenant and the fact that they were duly notified of the hearing, yet failed to attend, I am satisfied that to grant any relief would be prejudicial to the Landlord.

Costs

28. Regarding the Landlord Representatives request for an order of costs be paid by the Tenant, section 204(3) of the Act states the Board may order that its costs of a proceeding be paid by a party or the party's paid representative.
29. Rule 23.4 of the Landlord Tenant Board Rules states a party or a paid representative may be ordered to pay the LTB for its costs of a proceeding. Hearing costs will not exceed \$100 per hour to a maximum of \$700.00.
30. Having considered the request and reviewed the procedural history I am not satisfied costs are warranted. Specifically, the matters were adjourned once on September 5, 2023, and although I acknowledge the Landlord Representative efforts to resolve these matters before coming to the Board I am not satisfied that the ordering of costs is warranted. Accordingly, the request for costs is denied.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated effective April 1, 2024.
2. The Tenant shall pay to the Landlord **\$4,155.00** See Schedule 1 for the calculation of the amount owing.
3. The Tenant shall also pay the Landlord compensation of \$38.16 per day for the use of the unit starting March 8, 2024 until the date the Tenant moves out of the unit.
4. If the Tenant does not pay the Landlord the full amount owing on or before April 1, 2024, the Tenant will start to owe interest. This will be simple interest calculated from April 2, 2024 at 7.00% annually on the balance outstanding.
5. If the unit is not vacated on or before April 1, 2024, then starting April 2, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

- 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 April 2, 2024.

March 21, 2024

Date Issued

 Kelly Delaney

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 expires on October 2, 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.

Amount the Tenant must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$1,179.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Total out of pocket expenses	\$4,000.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$1,100.00
Less the amount of the interest on the last month's rent deposit	- \$109.55
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$4,155.45
Plus daily compensation owing for each day of occupation starting March 8, 2024	\$38.16 (per day)