



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

Citation: Lazaruk v Skelton, 2024 ONLTB 8071

Date: 2024-02-14

File Number: LTB-L-051465-23

2024 ONLTB 8071 (CanLII)

In the matter of: 7 FLEET ST
BRANTFORD ON N3T3S8

Between: Vincent Lazaruk Landlord

And

Russell Skelton Tenants
George Skelton
Robert Skelton

Vincent Lazaruk (the 'Landlord') applied for an order to terminate the tenancy and evict Russell Skelton, George Skelton and Robert Skelton (the 'Tenants') because the Tenants, another occupant of the rental unit or someone the Tenants 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 January 4, 2024.

The Landlord's Representative, Jordan Nieuwhof, the Landlord, the Landlord's witnesses, James W. Smith and Tim Harrington, as well as the Tenant's Agent, Shaelyn Nunn and the first-named Tenant attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy between the Landlord and the Tenants shall be terminated February 29, 2024.
2. The Tenant was in possession of the rental unit on the date the application was filed.

3. On June 8, 2023, the Landlord served the Tenants an N5 notice of termination. The notice of termination alleges that the Tenants have kept the rental unit in an extremely high state of clutter and, despite multiple times the Landlord has cleaned up the rental complex, the Tenants add new amounts of clutter to the rental complex and allow the state of the unit to get to an unsafe condition.
4. The Tenant did not stop the conduct or activity or correct the omission within seven days after receiving the N5 notice of termination. The rental complex had not been improved upon, nor had any clean-up begun. Therefore, the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).
5. The rental unit is a detached bungalow with a front and a back yard. The rental unit has 3 bedrooms.
6. The Landlord also owns two adjacent properties to the rental unit occupied by the Tenants.

Landlord Evidence

7. The Landlord testified that prior to July 21, 2022, the city of Brantford issued an order to the Landlord to clean the property. The rental complex had a substantial number of old bicycles, appliances, furniture and refuse stored in the front and back yard.
8. On July 21, 2022, the city came to the rental complex and removed all of the refuse and junk from the exterior of the complex, and subsequently sent the Landlord a bill of \$6,267.28 for clearing the rental complex.
9. The Landlord testified that after the city had removed all of the junk and refuse from the property, the Tenants almost immediately began re-accumulating more materials on the complex property.
10. On November 17, 2022, the Landlord hired a contractor to remove several large bins of junk and refuse from the rental complex. Photos of the completed clearing of the property were presented to corroborate this testimony.
11. The Landlord testified that once the lot was cleared, the Tenants began almost immediately refilling the complex grounds with more junk.
12. On February 14, 2023, the city issued another violation to the Landlord for failing to remove garbage and clutter from the rental complex.
13. On March 22, 2023, the Landlord, along with a contractor, were allowed by the Tenants to enter the rental unit. The Landlord encountered a high level of clutter to the point where little to no floor was visible.
14. Several photos of the interior and the exterior were submitted to corroborate the Landlord's testimony.
15. On March 23, 2023, the rental complex was again cleared by a contractor, however the Landlord testified that one of the Tenants became violent and would not allow anyone inside to clear the interior of the rental unit. Photos of the completed clearing of the exterior of the property were presented to corroborate this testimony.

16. The Landlord testified that since the N5 was served to the Tenants, the amount of junk and refuse on the property continues to grow. Due to the issues with the state of the unit and the city, the mortgage broker has refused to renew the mortgage on the rental unit property. A letter from the mortgage broker was submitted as evidence to support the Landlord's testimony.
17. In October 2023, The Landlord testified that in coordination with the owner of a neighbouring property in the rental complex neighbourhood, a 20-foot garbage bin was placed on the property at the Tenants' request. The Landlord testified that the Tenants only cleared a small portion of the rental property that was visible from the road, however, the Landlord submitted photos showing that the Tenants had avoided clearing a substantial amount of the property that was not visible from the road. The photos showed a substantial amount of junk piled higher than the fence, with little to no room to move. The Landlord used the Tenants' photo submission of the bin to illustrate that the 20' garbage bin the Landlord supplied the Tenants did not get more than 10% full.
18. The Landlord's witness, Tim Harrington (TH), is a neighbour to the Tenant's and is also a renter of one of the Landlord's properties.
19. TH testified that the clutter coming from the neighbouring unit has diminished his ability to reasonably enjoy his rental unit and has become a safety hazard. TH testified that the quantity of junk coming from the Tenant's rental unit is blocking his ability to escape through a window in case of an emergency.
20. TH also testified that he had to wait an extended period of time to have electricity reconnected because the amount of junk from the Tenants' rental unit was impeding the service workers ability to reconnect the power. This incident occurred on September 11, 2023, and was corroborated with an email sent by Grand Bridge Energy to the Landlord on September 18, 2023.
21. The Landlord's witness, James Westley Smith (JWS), was the contractor who completed the cleanups of the rental complex on November 17, 2022, and March 23, 2023.
22. JWS corroborated the Landlord's testimony regarding the high amounts of junk on the property. JWS attempted to assess the property on October 21, 2022. Despite notice having been given to the Tenants, one of the Tenants (Russell) refused to allow JWS on the property without the Landlord present.
23. JWS stated that in the clean-up of the property on November 17, 2023, three trailers full of junk were removed and sent to the dump.
24. JWS testified that on the March cleanup, there was substantially more junk than there was on the November clean up.
25. JWS testified to having been at the rental complex in September 2023. JWS described the garbage as being stacked as high as 5 feet and was pushing against the fence to the point where the fence was bending due to the weight against it.
26. JWS testified to having observed the property again in December 2023. JWS testified that the amount of junk on the property would take several trailer/truck loads more than any of the other cleanups to bring the property back within municipal standards.

27. The Tenants did not contest any of the Landlord's evidence.

Tenants' Evidence

28. The Tenant, Russell Skelton, testified that he and his brothers are attempting to clean the place. The Tenant does not deny that the Tenants have issues with hoarding.
29. The Tenant testified that the other two Tenants in the rental unit have become his dependents due to their own mental illness, however the Tenant testified that he is also dealing with issues of anxiety and depression.
30. The Tenant did testify to having worked to remedy the clutter on the property and submitted photographs of the cleaning. Photos included pictures of the garbage bin place on the front lawn with garbage in it. This is the same photo the Landlord presented in his own evidence showing the bin only filled to 10% capacity.
31. Under cross-examination, it was determined that most of the cleared space was due to the displacement of the removal of the garbage bin, and that most of the refuse had not been removed but stacked outside of the range of the camera used to take the photographs on behalf of the Tenants.
32. The Tenant testified that he is working with his social worker to get financial assistance of \$3,000.00 to fund the clearing of the property. However, the Tenant stated that due to the Landlord failing to respond to the Salvation Army's request for information, the Tenant was unable to secure the funds. The Tenant submitted the letter to corroborate this testimony.
33. Under cross-examination, the Tenant was unable to clarify whether the paperwork from the Salvation Army was to be earmarked for cleaning or for rent arrears, of which the Tenants are currently in. Under cross-examination, the Tenant admitted that they were in arrears around \$3,000.00 with the Landlord at the time the Salvation Army letter was issued.
34. The Tenant did not have a representative from the Salvation Army attend the hearing to testify to the intent of the Salvation Army's \$3,000.00 offer.
35. The Tenant was asked about what accommodations he requested the Landlord make due to the Tenants' mental illness, however the Tenant stated that they did not ask for any accommodations from the Landlord.
36. When asked what accommodations the Tenant would ask of the Landlord today, the Tenant responded that he felt that it would be reasonable to have the Landlord bring a garbage bin to the rental unit on a monthly basis at the Landlord's expense.

Analysis

37. Section 64(1) of the *Residential Tenancies Act, 2006* (the 'Act') states:

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

38. Pursuant to section 64(2)(c) of the Act, the Tenants have seven days from the service of the N5 notice to void the order. In order to void the order, the Tenants would have been required to clear the rental unit of clutter and refuse.
39. Section 33(1) of the Act states:
 - 33 The tenant is responsible for ordinary cleanliness of the rental unit, except to the extent that the tenancy agreement requires the landlord to clean it.
40. Based on the evidence before me, I am satisfied that the Tenants substantially interfered with the reasonable enjoyment and lawful rights of the Landlord by failing to keep the rental unit and complex in an ordinary state of cleanliness.
41. I also find that, based on the evidence before me, the Tenants failed to void the N5 notice within seven days of service.
42. The evidence presented by the Landlord largely went uncontested, including the fact that on prior attempts to clean the property, one of the Tenants who was not present at the hearing physically threatened a contractor and prevented them from assessing the property for treatment.
43. I am also satisfied, based on the evidence before me, that the clutter is affecting adjacent properties that the Landlord also owns, and that the amount of clutter being stored on the property is preventing other tenants from being able to access services required for them to properly enjoy their own rental units.
44. The Tenant submitted evidence that the Salvation Army was willing to pay \$3,000.00 towards the cleaning of the property, but due to the Landlord's failure to respond to the Salvation Army, the funds were not granted. However, I found the evidence presented failed to substantiate the claim that the \$3,000.00 was for cleaning the property and not for arrears, which the Tenant claimed were also around \$3,000.00 at the time this money was being sought by the Tenants.
45. Based on this evidence presented to me, I find that the Tenants have failed to prove that the support from the Salvation Army for \$3,000.00 was intended for clearing refuse from the property.
46. Based on the evidence before me, I find that in October 2023, the Tenants acted deceptively in hiding the refuse from the range of the camera when presenting their photographic evidence to the Board. I am satisfied by the Landlord's unchallenged evidence that the Tenants moved the refuse elsewhere on the property to make it appear that cleaning had occurred.
47. Furthermore, based on the evidence before me, I find that the Tenants have not made any meaningful attempts to clear the refuse from the property.

48. Therefore, I find that the Landlord has proven that the Tenants are substantially interfering with the Landlord's and other tenants' reasonable enjoyment of the rental unit or complex, and their lawful rights.

Daily Compensation & Rent Deposit

49. The Tenants were required to pay the Landlord \$9,784.11 in daily compensation for use and occupation of the rental unit for the period from July 3, 2023, to January 4, 2024, LESS any amounts paid to the Landlord since July 3, 2023.
50. Based on the Monthly rent, the daily compensation is \$52.60. This amount is calculated as follows: \$1,600.00 x 12, divided by 365 days.
51. The Landlord collected a rent deposit of \$1,600.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$60.95 is owing to the Tenant for the period from December 20, 2020, to January 4, 2024.
52. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

Relief From Eviction

53. The Tenant submitted that all three Tenants suffer from depression and anxiety. The Tenant, at the hearing, testified that he has become the guardian for his two brothers, who are dependent on him for regular living requirements such as food, and laundry.
54. The Tenant had stated that he would like to stay in the rental unit, and that it would be beneficial for the Landlord to help accommodate their mental illness by having a garbage bin put on the property on a monthly basis to help the Tenants clean the rental unit themselves.
55. The Landlord opposed the accommodation request because the expense of the garbage bin would exceed the monthly rent that is charged to the Tenants. Ordering the Landlord to make such an accommodation would be an undue hardship.
56. Furthermore, based on what occurred in October 2023, I am not satisfied that the Tenants would effectively use a 20' garbage bin to clear the property. Therefore, I find that the accommodation request made by the Tenant is not reasonable under the circumstances and would cause the Landlord to endure an undue hardship.
57. The Landlord submitted evidence that the mortgage broker has extended the mortgage for the rental complex property for a few weeks but will cancel the mortgage due to the charges made by the city against the Landlord; charges which were made against the Landlord due to the Tenants' behaviour.
58. Pursuant to section 83(1) of the Act, the Board may deny an application to evict a tenant, or to delay the termination of the tenancy if it deems it fair to do so.
59. In consideration of all of the evidence before me, I find that it would be unfair to deny the Landlord's application. I find that denying the Landlord's application would put a greater prejudice on the Landlord than the prejudice that the Tenants will experience by granting

the Landlord's application. I am satisfied, based on the evidence before me, that the Landlord will lose the property and suffer a great financial hardship if the tenancy is allowed to continue.

60. In consideration of the Tenants' situation, I find that it would not be unfair, pursuant to section 83(1)(b) of the Act, to delay the termination of the tenancy until February 29, 2024.

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 February 29, 2024.
2. If the unit is not vacated on or before February 29, 2024, then starting March 1, 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 March 1, 2024.
4. The Tenants shall pay to the Landlord \$9,784.11, less any amount paid since July 3, 2023, which represents compensation for the use of the unit from July 3, 2023, to January 4, 2024.
5. The Tenants shall also pay the Landlord compensation of \$52.60 per day for the use of the unit starting January 5, 2024, until the date the Tenant moves out of the unit.
6. The Landlord owes \$1,660.95 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.
7. The total amount the Tenants owes the Landlord is \$8,123.16 less any payments already paid by the Tenants.
8. If the Tenants do not pay the Landlord the full amount owing on or before February 29, 2024, the Tenant will start to owe interest. This will be simple interest calculated from March 1, 2024, at 7.00% annually on the balance outstanding.

February 14, 2024

Date Issued

Robert Brown

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 August 29, 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.