



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

Citation: Renaud v Jimenez, 2024 ONLTB 2695

Date: 2024-01-08

File Number: LTB-L-063962-22

In the matter of: 2, 1661 FRONT RD
LASALLE ON N9J2B7

Between: Robert Renaud Landlord

And

Daniel Jimenez Tenant

Robert Renaud (the 'Landlord') applied for an order to terminate the tenancy and evict Daniel Jimenez (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 September 25, 2023. The Landlord, the Landlord's legal representative, B. Dean, and the Tenant attended the hearing.

Determinations:

Preliminary Issue:

1. At the outset of the hearing, I raised a preliminary issue with respect to the Landlord's second N5 notice of termination. Included in the second N5 was an event that took place during the 'voiding' period of the first N5 served on the Tenant. As the second N5 was invalid, I canvassed the parties with respect to amending the application to be with respect

to the first N5 served on the Tenant. The Tenant was prepared to speak to the allegations contained in that notice and so since there was no prejudice to the Tenant, I amended the application.

2. As the amendment was granted, this order shall only discuss the first N5 notice of termination.

L2 Application:

3. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. However, I do not find that the Landlord is entitled to an eviction order. The tenancy will continue subject to the conditions set out in this order.
4. The Tenant was in possession of the rental unit on the date the application was filed.
5. On October 4, 2022, the Landlord gave the Tenant an N5 notice of termination by leaving the document in the mailbox, or in a place where mail is normally delivered, with a termination date of October 26, 2022.
6. The notice of termination contains, in part the following allegations:
 - September 12, 2022, the Landlord gave the Tenant a notice to enter the rental unit, to investigate a possible leak in the rental unit.
 - September 14, 2022, when the Landlord attended the rental unit with his repair person, the Tenant denied entry.
 - September 28, 2022, the Landlord served another notice of entry for October 3, 2022. On October 3, 2022, the Landlord was once again denied entry.
7. In accounting for the period the Tenant had to void the first notice those specific dates were from the period October 5, 2022 to October 11, 2022. The Landlord says that on October 6, 2022 he was also denied entry. The Tenant did not dispute the allegation and also noted he did not really remember the specifics.
8. As the Tenant did not stop the following conduct or correct the omission within the seven days after receiving the N5 notice of termination, I find that the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).
9. The Landlord says that since September 12, 2022 to the date of the hearing he has not been able to gain entry into the rental unit to source the leak. At the hearing the Landlord supplied photos of adjacent units in the building and the Tenants unit which show signs of a potential leak located somewhere in the building.
10. The Tenant denies this and states that the Landlord's repair people have been into the rental unit as well as someone hired to fix the roof. He did not dispute that he has not

always let the Landlord in as he claims that the Landlord is rude to him and his family when he is in the unit, which is why he denies entry.

11. A Landlord's right to enter with notice is found at section 27 of the Act. It provides that a landlord may enter a rental unit with notice to carry out a repair or replacement or do work in a rental unit or to carry out an inspection to determine the condition of a rental unit. Based on the evidence educed at the hearing, I find that the Landlord had a plausible and justified reason to attempt to gain entry, which the Tenant did deny after receiving proper notice. This is supported by the Tenant's own acknowledgement and email communications between the parties.
12. I will also note that a Landlord has a legal duty to maintain the residential complex in accordance with section 20 of the Act, and by the Tenant not allowing entry so that the Landlord can effect necessary repairs it also has the potential to open the Landlord up to other liabilities and potential applications to the Board by this or other tenants. Therefore, I find that the Tenant has substantially interfered with an interest of the Landlord, and the Landlord has proven their application.
13. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Relief from Eviction:

14. 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.
15. One particular instance that is of significance was one that occurred after the notice of termination was served, but before the hearing. The Landlord alleges that on January 3, 2023, while completing maintenance the Tenant assaulted him. As a result of this incident the Tenant entered into a peace bond with conditions.
16. There was a dispute between what specifically the conditions of the peace bond are. The Landlord claims that as a condition the Tenant is not to communicate directly or indirectly with him. The Tenant claims that he may communicate with the Landlord only in relation to the residential tenancy. The Landlord submitted a copy of the undertaking and the Tenant submitted as a post hearing submission the letter from his defence counsel from his attendance on September 18, 2023.
17. Although, the Tenant's legal representative did not attend the hearing as a witness, I accept the letter in so far as to acknowledge that the Tenant may communicate with the Landlord only about matters with respect to the residential tenancy. I say this because the author of the letter speaks about his personal attendance for a disposition on the date noted in the letter, the author is assumed to be licensed by the Law Society of Ontario and with that come specific obligations and requirements.

18. The tenancy commenced in 2014 or 2015, and so it is quite a lengthy tenancy. The Tenant confirmed that he would abide by a conditional order, if one was issued. The Tenant is a nurse and works full time in the area. The Tenant also has a child who attends school in the area.
19. Although the Landlord requested an order terminating the tenancy, given the length of the tenancy and the Tenant's willingness to cooperate with a conditional order- I believe it will properly address the Landlord's concerns and interests. I say this because the assault has been adequately addressed through the undertaking and peace bond and I note this appears to be an isolated incident, the Landlord will be getting an order requiring the Tenant to allow entry upon being served notices in accordance with the Act and to cooperate with the repairs that the Landlord chooses to conduct on the rental unit. Failing which he may commence an ex-parte application with the Board.
20. As the tenancy is not being terminated the Landlord is not entitled to overholding compensation.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
2. The parties shall maintain cordial communication both verbally and in writing.
3. The Tenant shall comply with notices of entry served in accordance with the Act.
4. The Tenant shall cooperate and allow repairs to be carried out in the rental unit or residential complex.
5. The Tenant shall not physically assault the Landlord.
6. If the Tenant fails to comply with the conditions set out in paragraphs 2-5 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.
7. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
8. If the Tenant does not pay the Landlord the full amount owing on or before January 19, 2024, the Tenant will start to owe interest. This will be simple interest calculated from January 20, 2024 at 7.00% annually on the balance outstanding.

January 8, 2024

Date Issued

Curtis Begg

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.