



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

Citation: Homestead Land Holdings Limited v Harris, 2023 ONLTB 79871

Date: 2023-12-12

File Number: LTB-L-046904-23

In the matter of: 805, 130 ROSEDALE VALLEY RD
TORONTO ON M4W1P9

Between: Homestead Land Holdings Limited Landlord

And

Carla Harris Tenant

Homestead Land Holdings Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Carla Harris (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 13, 2023, and November 7, 2023.

Only the Landlord's Representative, Lee Anne Thibert, the Landlord's Agent, Mark Parnega, and the Landlord's Witness, Michelle Bizier, attended the hearing.

As of 9:45am, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. The only correspondence from the Tenant to the Board since the originally scheduled hearing on September 13, 2023, was a notice from the Tenant's legal representatives, stating that they were no longer representing the Tenant on this matter. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. Both parties attended the initial hearing date of September 13, 2023, however the matter was adjourned at the Tenant's request. An Interim Order was issued by the Board (LTB-L046904-23) on September 26, 2023.

2. 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 Tenant shall be terminated on December 31, 2023.
3. The Tenant was in possession of the rental unit on the date the application was filed. The Tenant is still in possession of the rental unit as of the date of this hearing.
4. On June 1, 2023, the Landlord served the Tenant an N5 notice of termination. The notice of termination alleges that the Tenant allows her dogs to roam free throughout the rental complex unsupervised and without a leash. As a result, the Tenant's dogs would urinate or defecate throughout the rental complex, and, in the hallway which the Tenant's rental unit is located.
5. The Tenant did not stop the conduct or activity after receiving the N5 notice of termination. The Landlord presented evidence that on June 7, 2023, at or around 11:25pm, the Tenant left their door open to allow their dogs to go in and out of the rental unit, thus failing to keep their dogs tethered when in the rental complex. Therefore, the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).
6. The witness for the Landlord, Michelle Bizier (MB), has been a tenant at the rental complex for 20 years.
7. MB testified that the Tenant owns two dogs.
8. MB has witnessed the Tenant's dogs outside of the Tenant's rental unit on numerous occasions since 2022.
9. MB testified that since November 2022, the Tenant has allowed their dogs to roam free throughout the rental complex. Although MB testified that she witnessed one of the two dogs urinate on the carpet specifically on February 22, 2023, there have been several undocumented times that MB has either witnessed one of the two dogs relieving themselves on the carpeted floors in the hallways or would discover either urine stains or dog feces in the hallway.
10. MB presented photos and videos of the dogs being let outside of the rental unit May 2, 2023, June 7, 2023, and June 19, 2023. All of the video footage was taken by MB and showed that the dogs were outside of the rental unit and in the hallway without a leash.
11. One of the videos showed MB addressing her concerns with the Tenant regarding the dogs being let outside without a leash, only to be met with a murmur from the Tenant, repeating back what MB said in a mocking way.
12. MB testified that the hallway had a persistent foul odour due to the dogs' frequent urination and defecation in the hallway.
13. An interim order (LTB-L-046904-23-IN) was issued by the Board on September 26, 2023. Paragraph 2 of the interim order stated that "The Tenant, their occupant and/or permitted guests shall refrain from allowing their pet dogs from being unattended and/or unleashed with the common areas of the rental complex."

14. MB testified that on October 27, 2023, she saw that the Tenant allowed both of their dogs to roam freely throughout the lobby and hallway of the rental complex, thus breaching this condition of the interim order.
15. The Landlord's Agent, Mark Parnega (MP), is an employee of the Landlord.
16. MP testified that due to the Tenant's dogs relieving themselves throughout the hallways and elsewhere in the rental complex, the Landlord has had to change their cleaning schedules to put more time into thoroughly cleaning the areas where the dogs had been. This includes steam cleanings in excess of what would normally be required to clean the rental complex.
17. MP testified that he has tried to address the problem with the Tenant, both in person and in writing, however the Tenant ignores all attempts at communication. MP presented letters dated April 27, and July 11, 2023, warning the Tenant about allowing their dogs to relieve themselves in the hallway.
18. MP presented a photo of dog feces discovered on July 26, 2023, in the hallway. According to MP, the staff had reported to him that they were required to clean some form of dog waste from the hallway on almost a daily basis.

Analysis

19. 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.

20. Based on the uncontested evidence before me, I am satisfied that the N5 served to the Tenant was valid. I find that that the Landlord has met the burden of proof required to show that the Tenant did substantially interfere with the reasonable enjoyment of the other tenants throughout the complex as well as the lawful rights, interests and privileges of the Landlord.

21. Section 64(3) of the Act states:

(3) The notice of termination under subsection (1) is void if the tenant, within seven days after receiving the notice, stops the conduct or activity or corrects the omission.

22. Based on the evidence before me, I am satisfied that the Tenant failed to void this order by refraining from the behaviour addressed in the N5 by continuing to allow their dogs into the rental complex untethered and unsupervised within the voiding period of seven days after receiving the N5. I am satisfied, based on the uncontested evidence before me, that

the Tenant allowed their dogs to roam free on June 7, 2023, or within 7 days of the N5 being served to the Tenant on June 1, 2023.

Daily Compensation

23. At the hearing, the Landlord's Representative informed the Board that there is another outstanding order from the Board for arrears in rent (LTB-L-040339-23, issued October 27, 2023). Since arrears in rent have been addressed in that order, to avoid redundancy or potential conflict or confusion, the Board will not grant daily compensation on this order.

Therefore, issues regarding rent arrears, and the last month's rent deposit and interest (if applicable), shall be left addressed on the order for LTB-L-040339-23.

Relief From Eviction

24. The Tenant was not present at the hearing to make submissions for relief from eviction pursuant to section 83 of the Act.
25. Pursuant to section 204 of the Act, the Board has the right to impose a conditional order if it deems it to be fair.
26. Based on the evidence before me, the Tenant failed to respond to direct complaints from both the neighbouring tenants, and the Landlord. The Tenant chose not to void the N5 by allowing their dogs out into the hallway during the 7-day voiding period. Furthermore, the Tenant acted contrary to the interim order issued after the first hearing by allowing their dogs to wander the halls and lobby untethered and unsupervised. I find that the Tenant's pattern of behaviour indicates that the Tenant would not honour a conditional order. Therefore, it would not be fair to impose one on the parties.
27. At the hearing, the Landlord's Representative asked that the date of termination be extended to December 31, 2023, to match the date of termination ordered on LTB-L-040339-23. I find that the Landlord's request is reasonable and shall be granted.
28. 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 postpone the eviction until December 31, 2023, pursuant to subsection 83(1)(b) of the Act.

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 December 31, 2023.
2. If the unit is not vacated on or before December 31, 2023, then starting January 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 January 1, 2024.

December 12, 2023

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 July 1, 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.