



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

Citation: Johnston v Barr, 2023 ONLTB 75908

Date: 2023-11-29

File Number: LTB-L-066186-23

In the matter of: Apartment 1, 159 XAVIER ST RENFREW
ON K7V1L3

Between: Tanner Johnston Landlord

And

Alyssa Barr Tenant

Tanner Johnston (the 'Landlord') applied for an order to terminate the tenancy and evict Alyssa Barr (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 Tenant or another occupant of the rental unit has committed an illegal act or has carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential complex involving the production of an illegal drug, the trafficking in an illegal drug or the possession of an illegal drug for the purposes of trafficking;
- the Tenant or another occupant of the rental unit has committed an illegal act or has carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential complex; and
- the Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex.

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 November 9, 2023. The Landlord, the Landlord's Legal Representative, A. Alzameli, and the 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.
2. The Tenant was in possession of the rental unit on the date the application was filed.

Substantial Interference

3. On August 14, 2023, the Landlord gave the Tenant a Notice to End your Tenancy for Interfering with Others, Damage or Overcrowding (N5) with a termination date of September 7, 2023.
4. The Landlord alleged in the notice that the Tenant caused excessive noise by slamming the door of the unit numerous times, yelling obscenities, ringing other residents' doorbell, smoking inside the rental unit, leaving garbage in front of the residential complex, and outside the unit, and carrying on a verbal dispute with another resident who asked her to clean up the mess.
5. The Landlord testified that the Tenant continued with the conduct complained about:
 - a. On August 15, 2023, there was smell of cigarette smoke from the rental unit.
 - b. On August 19, 2023, the Landlord received a complaint via voicemail from another resident, BM, about yelling from the unit.
 - c. On August 22, 2023, BM sent the Landlord a text message stating that the Tenant and her father were making a 'fair bit of noise and loud talk' and that the father's 'cronies' showed up again and interfered with his sleep in the early hours of the morning.
 - d. On October 4, 2023, the Landlord received a complaint from a neighbouring community living facility about the Tenant's screams.
 - e. On October 15, 2023, BM complained about excessive noise and smoking from the unit, and
 - f. On October 17, 2023, BM reported door slamming and screaming between the Tenant and another individual.
6. The Landlord presented a letter from BM written in October 2023, in which he amongst other things stated that there was extended yelling and screaming between the Tenant and her father on October 15, 2023, and other loud disturbances on October 17, 2023.
7. The Tenant, who confirmed that BM's unit is next to hers, denied smoking in the unit and testified that she kicked her father out of the unit before she received the notice of termination, but had to allow him back because she became his surety. The Tenant admitted that she raises her voice with him sometimes, like when she told him to remove the garbage from the yard. The Tenant claimed that she cleaned the garbage from the residential complex

prior to the service of the notice of termination but only took a picture on October 25, 2023 to show it was done.

8. The Tenant slams the door of the rental unit because it does not shut properly and she had previously made a complaint to the Landlord, which the Landlord did not dispute.
9. The Tenant claimed that her father was not present in the unit on August 19, 2023, and if he was, she was trying to get him to leave.
10. Section 64(3) of the Residential Tenancies Act, 2006 ('the Act') provides that the first N5 is voided if the Tenant, within seven days after receiving the notice, stops the conduct or activity or corrects the omission complained about. In this case, the 7-day voiding period ran from August 15, 2023 to August 21, 2023. The Tenant did not void the N5 notice of termination in accordance with section 64(3) of the *Residential Tenancies Act, 2006* (Act) because the noise disturbances continued and unlike the Tenant whose memory was questionable, the Landlord was categorical about receiving a complaint from BM on August 19, 2023.
11. The evidence demonstrates that the Tenant continues to cause excessive noise in the rental unit, and acknowledges having loud disagreements with her father, and although she claimed that she removed the garbage prior to the service of the notice of termination, no evidence was provided to support the claim it was done prior to August 14, 2023, or during the voiding period. Therefore, I find that the conduct of the Tenant has substantially interfered with the reasonable enjoyment of the residential complex and with a lawful right, privilege or interest of the Landlord or another Tenant.

Illegal Act

12. On August 14, 2023, the Landlord gave the Tenant a Notice to End your Tenancy for Illegal Acts or Misrepresenting Income in a Rent-Geared-to-Income Rental Unit (N6) with a termination date of September 7, 2023.
13. The Landlord alleged in the notice that on October 30, 2023, an occupant of the unit, JL, stole mail from another resident, JM, and caused damage to a camera. The Undertaking from the police regarding both incidents were provided as evidence by the Landlord.
14. The Landlord also alleged that on July 14, 2023, following an incident of reported drug use, drinking and partying in the rental unit, the police were called and the Tenant admitted to the Landlord that illegal drug activity took place. The police seized a crack pipe and crack cocaine residue from the unit.
15. The Tenant testified that JL was neither a guest nor an occupant of the unit and provided text messages dated October 24, 2023 of her asking JL if he ever resided in the unit because she was facing eviction over it. He responded that he was there once only to drop off groceries for her father.
16. The Tenant claimed that on July 14, 2023, the police found an empty bag with residue and a crack pipe in her father's belongings of which she was unaware.

17. Based on all the evidence, I am satisfied that the Tenant's father, an occupant of the rental unit, on July 14, 2023, committed an illegal act involving the possession of an illegal drug in the residential complex.
18. In addition, while the Tenant denies that JL was a guest, he admitted he was in the residential complex to deliver grocery to the Tenant's father and was in all probability, permitted in the residential complex. I am satisfied from the video evidence provided by the Landlord that he committed an illegal act when he damaged the camera belonging to another resident and stole mail, both offences for which he was charged.

Impairment of Safety

19. On August 14, 2023, the Landlord gave the Tenant a Notice to End your Tenancy for Causing Serious Problems in the Rental Unit or Residential Complex (N7) with a termination date of September 7, 2023.
20. The Landlord alleged in the notice that on October 2, 2022, another resident, JM, complained that the Tenant shouted and swore furiously as she knocked on JM's door. A video of the Tenant knocking on JM's door and swearing at her was presented as evidence at the hearing. This and other incidents, not contained in the N7 notice, scared JM into vacating the rental unit.
21. On June 18, 2023, July 17, 2023, July 22, 2023, and July 31, 2023, the Tenant made several posts online threatening to harm the Landlord, shoot people, burn the rental unit, kill, and took a picture in the rental unit in which she brandished a knife. The Landlord presented copies of the posts as evidence.
22. The Tenant testified that the posts were about an old roommate and an ex-boyfriend who was the sole focus of her threats. On October 2, 2022, she was upset at JM when she went to her doorstep to yell at her because there were loud noises and fumes emanating from JM's unit.
23. Section 66 (1) of the Act provides that a Landlord may give a Tenant a notice of termination of the tenancy if an act or omission of the Tenant, seriously impairs or has seriously impaired the safety of any person; and the act or omission occurs in the residential complex.
24. Based on all the evidence, the Landlord has failed to demonstrate that the Tenant's posts on social media were directed at the Landlord or other residents of the complex. While the video taken of the Tenant showed her knocking on JM's door and screaming, I am not satisfied that this singular incident seriously impaired JM's safety.
25. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
26. The Landlord collected a rent deposit of \$970.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$41.94 is owing to the Tenant for the period from August 11, 2021 to November 9, 2023 .

27. 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.
28. I have considered all 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. Additional time is given to the Tenant to secure alternative accommodation, and during this time, the Tenant and her occupants and guests, must refrain from causing more disturbances or carrying on any of the conduct underlined here.

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.
4. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
5. The Landlord owes \$1,011.94 which is the amount of the rent deposit and interest on the rent deposit. This amount shall be applied to the last month of the tenancy.
6. If the Tenant does not pay the Landlord the full amount owing on or before December 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 1, 2024 at 7.00% annually on the balance outstanding.

November 29, 2023

Date Issued

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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.