



**Order under Section 69 / 89
Residential Tenancies Act, 2006**

Citation: Hazelview Property Services In v Lendore, 2023 ONLTB 75851

Date: 2023-11-22

File Number: LTB-L-075346-23

In the matter of: 0711, 25 RAMBLER DR
BRAMPTON ON L6W1E4

Between: Hazelview Property Services In Landlord

And

Phil Lendore Tenant

2023 ONLTB 75851 (CanLII)

Hazelview Property Services In (the 'Landlord') applied for an order to terminate the tenancy and evict Phil Lendore and North Peel & Dufferin Community Legal Services (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, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises; 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; and 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.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

The Landlord also applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

This application was heard by videoconference on November 8, 2023.

The Landlord's Legal Representative, Sean Beard, the Landlord's witness, Alessia Macchione, the Tenant, and the Tenant's Legal Representative, Fintan Lee, attended the hearing.

Determinations:

1. The Tenant was in possession of the rental unit on the date the application was filed and is still in possession as of the date of the hearing.
2. The Tenant has lived in the rental unit for over 12 years. The Tenant is currently receiving ODSP including a rent subsidy which allows him the ability to afford to live in the current rental complex.

Landlord's Notices of Termination

3. On September 11, 2023, the Landlord gave the Tenant an N6 notice of termination alleging 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; and 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.
4. On September 11, 2023, the Landlord also gave the Tenant an N7 notice of termination alleging 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; and the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully caused undue damage to the premises.
5. At the hearing, the Landlord's Legal Representative and the Landlord's witness, Alessia Macchione, who is also an employee of the Landlord, presented 16 separate incidents as the reason why they are seeking an eviction of the Tenant. The list of incidents are as follows:

1. January 10/23 — 9:58 am Discovered back door window was smashed. Checked security cameras to find that an occupant/guest of Tenant deliberately kicked in the window per attached photos and incident report. Tenant was charged back \$619.81 and he paid \$620.00 to replace it.

2. January 10/23 - Tenant changed the deadbolt and the master key no longer worked. Suite had to be rekeyed per attached chargeback. Damages \$324.31. Unpaid.

3. January 17/23 — Site staff discovered person sleeping in staircase on 7th floor. When she was asked to leave and she left but returned and went to apartment 711. Site staff saw resident with all her belongings at apartment 711 and asked her to leave.

4. January 26/23 — 1:30 pm Tenant called Jan 25/23 6:00 pm advising that his key was not working. Site staff attended his apartment on Jan 26th to investigate the matter only to find out that tenant was using wrong key. At that time, site staff advised tenant that we are receiving complaints from other residents about his guests coming in and out of his unit and stairs all night. The Tenant woke all of his guests and told them they had to leave and not to come back. The same guest that smashed the window on Jan 10th, shoved a book in the site staff's face and said "Fuck you" and he left

with 1 other woman and 4 other men. Site staff went down to the lobby and same guest that shoved book in site staff's face, started yelling at site staff when she arrived in lobby. Police were called.

5. February 5/23 12:10 am - Received resident complaints about guests/visitors (one is the same visitor in item #1 and #3) continuously bringing items in a shopping cart with items in it, to apt 711's apartment. On review of security cameras, it was confirmed that this was happening. Site staff spoke with Tenant and Tenant apologized and advised that he would not happen again in the future.

6. February 6/23 8:45 am — Site staff found Tenant's guest (same guest/visitor/occupant as noted in item#1) sleeping in the lobby. He was asked to leave and advised that he was going to apartment #711. Two other people located in stairwell of 7th floor and 11th floor and when asked to leave, both advised they were there to see tenant in apt 711.

7. March 2/23 — Tenant requested another key for his entrance door as he had misplaced his. When site staff brought key to his apartment to give to tenant, it was discovered that the fire rated door was completely cracked and the deadbolt was upside down. The Tenant was advised that the door was unrepairable. Later that day a guest of the Tenant asked site staff if the Tenant was being charged for the door. The guest was told that building cannot disclose this information but advised that two of the Tenant's guests tried to force the door open when it was locked and that is why it was broken. Damages \$1,751.50. Unpaid.

8. March 6/23 — On Feb 25th at 9:50 am site staff came into work and saw that the Handicap push button was broken and hanging off of the wall. Site staff checked camera and discovered that guests/visitors of apartment 711 kicked the button and broke it. Tenant was advised and he confirmed that he "would take care of it" but he did not. Damages \$630.54. Unpaid

9. March 7/23 9:15 am— When site staff entered the Tenant's apartment during door replacement, a female was in the staircase with a shopping cart and luggage. She was asked to leave and she advised that she is residing in apartment #711 for the night as it was too cold to go outside. When asked a second time to leave the building (she was in the staircase), she blew smoke from a pipe into the face of the site staff. When site staff advised this guest to put the pipe away, she continued to light the pipe and try to blow smoke into her face.

10. March 21/23 8:39 am - Advised by another tenant that when her son went to walk the dog, they saw someone sleeping in the hallway. On further investigation, the person was located with drugs and drug paraphernalia around him. This person went to apartment 711.

11. March 29/23 3:30 pm — After receiving a call from a resident advising that the police were at the building at apartment #711, I saw the police leave with the Tenant in handcuffs. The police officer could not disclose information when questioned however the Tenant, 3 males and 2 females were in handcuffs as they came down to the lobby and one female was not in handcuffs and she left the building with the police crying. Later that day a search warrant was presented for a complete search of apartment #711. Police report #PR230101511

12. May 26/23 12:00 pm — Site staff received call from resident that a male was in the hallway on the 7th floor and that he kicked and cracked the entrance fire rated door. Police were called. Site staff spoke with the Tenant about this matter and Tenant advised that he required a new door because this male person kicked the door down when he refused access. Tenant advised he was in a zoom meeting in court so he could not let him in and the person got mad. Tenant was told he was responsible to pay for new door and acknowledged same. Damages \$1,808.00. Unpaid.

13. May 26/23 9:50 pm — Site Maintenance Technician discovered on May 27/23 8:30 am that his car window was broken and his tools were stolen while parked on the property in the underground garage. Video shows unknown male breaking into the vehicle and stealing the tools and taking them up to the 7th floor. At 11:50 pm video shows

3 unknown people getting onto elevator on 7th floor and removing same tools from the building. All 3 males are recognized by site staff as regular guests/visitors of tenant in apartment 711. Site staff spoke with tenant in apartment #711 and Tenant advised this his guest were not there but would be back soon. 2:30 pm the following day the person that stole the tools returned them to Maintenance Technician's apartment and advised "I did not know it was your car, if we did, we would have never did it."

14. June 10/23 9:30 pm — Residents reported multiple calls regarding loud noises from 7th floor. Discovered police tactical team were breaking down door in apartment #711. One person was removed in handcuffs. Entrance fire rated door had to be replaced. Damages \$1,808.00. Unpaid.

15. August 31/23 11:04 am — Tenant is seen physically assaulting one of his known guests in parking lot as seen on video.

16. September 4/23 — Police kick in entrance fire rated door again resulting in new entrance door to be supplied and installed and this time the door closer portion of the door was also broken. Damages \$1,921.00. Unpaid.

6. The Landlord's Legal Representative also presented a video of Incident 15 from August 31, 2023. The Landlord's witness, testified that the Tenant came out the building after a female guest and followed her into the residential complex's parking lot. The Tenant appeared angry and pushed the female guest down to the ground and then took her bags and threw them down. The Landlord's witness who was in video then came over to the Tenant spoke to him and then the Tenant returned inside the building. The Landlord's Legal Representative explained that in pushing the female guest to the ground, the Tenant committed assault.
7. The Landlord's Legal Representative requested that the Tenant be evicted by the Board due to the lengthy list of alleged interference, negligence and illegal activities that were included in the Landlord's evidence.

Tenant's Response

8. The Tenant's Legal Representative began his defence of the Tenant by pointing out that the entire list of alleged incidents all took place within the last year and that the Tenant had lived there for 11 years before this without problems. The Tenant's Legal Representative and the Tenant also pointed out that the Landlord's witness, Alessia Macchione, has only worked in the building for a year, and that it is not a coincidence that all of the incidents have been reported about the Tenant since then.
9. The Tenant testified that the Landlord's witness is out to get him and that he has had nothing but problems since she arrived in the building. The Tenant added that the Landlord's witness blames him for anything that happens in the building, regardless of who actually does it.
10. The Tenant's Legal Representative and the Tenant then went through each one of the 16 incidents that were presented by the Landlord's Legal Representative into evidence. The Tenant's Legal Representative explained that almost every one of the reported incidents involved other people, most of whom were not invited into the building by the Tenant. The Tenant explained that he is a friendly guy and that people often knock on his door and that refuses entry to random people walking inside the building. He added that sometimes

people get aggressive in trying to get into his unit but that it is not his fault. Building security is very lax in the residential complex.

11. The Tenant's Legal Representative further explained that the 'guests' referred to by the Landlord's Legal Representative and the Landlord's witness were not really guests at all. And definitely not 'guests' of the Tenant. The Tenant testified that the residential complex is located in a very rough part of Brampton and that people often piggy-backed into the building when a resident opened the front door to enter. The Tenant then stated that the Landlord's witness often attributed every undesirable person entering the building as a 'guest' of himself, the Tenant. The Tenant continued that due to the building's location and that there are many homeless people in the area, plenty of them are always trying to sneak in. However, the Tenant vehemently testified that he does not let these people in the residential complex and that the Landlord has no evidence that he does.
12. The Tenant also stated that he has always paid his rent on time and would likely end up homeless if evicted from his home of 12 years.
13. When asked about the 'assault' video, the Tenant responded that the woman, Maria, had called him the "N" word (as the Tenant is from Trinidad and Tobago), had called him a pedophile, and also stated that the Tenant likes little boys. The Tenant explained that he was extremely upset at being called the "N" word as well as a pedophile and he angrily followed Maria out of the building. He admitted to pushing her down, but the Tenant did state that he did not strike her. The Tenant's Legal Representative added that the Tenant was highly upset and provoked by Maria's awful statements about the Tenant.

Findings

14. According to subsection 62(1) of the *Residential Tenancies Act, 2006* (the 'Act') regarding termination for cause (damage), the Act states: A landlord may give a tenant notice of termination of the tenancy if the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex wilfully or negligently causes undue damage to the rental unit or the residential complex.
15. In order for the Landlord to be successful in this application, the Landlord must show that the Tenant and/or any of the Tenant's invited 'guests' were in fact responsible for the damage whether the damage be either wilful or negligent. In this matter, I find that the Landlord did not prove that any of the referred to 'guests' in the Landlord's evidence were in fact actual 'guests' of the Tenant. The Tenant testified that he did not invite any of these individuals into the residential complex or into his apartment and neither the Landlord's Legal Representative nor the Landlord's witness could disprove this claim. Therefore, since the Landlord has not proven on a balance of probabilities that the Tenant was in fact responsible, the Board cannot order the Tenant to pay.
16. According to subsection 66(1) of the *Residential Tenancies Act, 2006* (the 'Act') regarding termination for cause (act impairs safety), the Act states: A landlord may give a tenant notice of termination of the tenancy if,
 - (a) an act or omission of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant seriously impairs or has seriously impaired the safety of any person; and
 - (b) the act or omission occurs in the residential complex.

17. I find that the Tenant's behaviour in the 'assault video' was not acceptable, regardless of the Tenant's explanation or provocation. The Tenant chased a woman outside and pushed her down to the ground. The video evidence was very clear on this. However, I am exercising my discretion in this matter. Given that the Tenant has lived in his apartment for 12 years and that this is only incident of this kind during his tenancy, I am ordering a conditional order instead of an outright eviction.

Relief from eviction

18. 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.
19. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
20. This order contains all of the reasons for this matter and no further reasons shall be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
2. **For a period of one year from the date of this order, the Tenant shall not assault or threaten any staff, tenants or visitors in the residential complex.**
3. If the Tenant fails to comply with the conditions set out in paragraph 2 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.
4. The Tenant shall pay to the Landlord **\$186.00** for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing on or before November 27, 2023, the Tenant will start to owe interest. This will be simple interest calculated from November 28, 2023, at 7.00% annually on the balance outstanding.

November 22, 2023
Date Issued

Michael Di Salle
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.