



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

Citation: QuadReal Residential Properties G.P. Inc. v Ferguson, 2023 ONLTB 74222

Date: 2023-11-15

File Number: LTB-L-060065-22

In the matter of: 212, 26 UNDERHILL DR
Toronto ON M3A2J3

Between: QuadReal Residential Properties G.P. Inc. Landlord

And

Daniel Ferguson Tenant

QuadReal Residential Properties G.P. Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Daniel Ferguson (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 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 1, 2023. Only the Landlord's legal agent, N. Manalang (NM), and the Landlord's legal representative, M. Zarnett, attended the hearing.

As of 10:00 a.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. 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. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy is terminated as of November 26, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N5 Notice of Termination

Substantial interference

3. On September 27, 2022, the Landlord gave the Tenant an N5 notice of termination. The notice of termination contains the following allegations: the Tenant, occupant or guest of the Tenant smoked cigarettes / marijuana in the rental unit.
4. NM testified that on several dates, he received complaints from the neighbouring unit (the 'Neighbour') about smelling smoke emanating from the rental unit. The Neighbour provided the Landlord with a log of when she smelled smoke coming from the Tenant's unit. Submitted into evidence was a lease agreement identifying that the Tenant was prohibited from smoking in the residential complex. Also submitted into evidence was the log and an email from the Neighbour about how the smoke affected her and her family, identifying that the smoke was exacerbating asthma and making it difficult to sleep. The Neighbour refused to attend the hearing to testify to the events.
5. I am satisfied that the Tenant substantially interfered with the reasonable enjoyment or lawful right, privilege and interest of the Landlord or another tenant. I base this on the uncontested evidence of NM who received the complaints, and the Neighbour's email and logs.
6. The Tenant did not stop the conduct or activity within seven days after receiving the N5 notice of termination. The Neighbour's logs showed that she continued to smell smoke emanating from the Tenant's unit on October 3, 5, 6, 7, 8 and 9, 2022. Therefore, 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)*.

N7 Notice of Termination

7. On September 27, 2022, the Landlord gave the Tenant an N7 notice of termination. The notice of termination contains the same allegations as the N5 notice of termination.

Serious Impairment of Safety

8. Having found that the Tenant substantially interfered with the reasonable enjoyment or lawful right, privilege and interest of the Landlord or another tenant, and that the Tenant did not void the notice of termination by ceasing the conduct, I am satisfied that the

tenancy should be terminated. As such, I find that deciding the merits of the N7 Notice of termination is moot.

Daily compensation, NSF charges, rent deposit

9. NM testified that rent is up to date.
10. Based on the Monthly rent, the daily compensation is \$87.55. This amount is calculated as follows: \$2,662.95 x 12, divided by 365 days.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. The Landlord collected a rent deposit of \$2,688.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$95.55 is owing to the Tenant for the period from June 1, 2022 to November 1, 2023.
13. 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

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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
15. NM testified that the Tenant continued to smoke after the service of the notices. The Neighbour vacated because of the Tenant's actions. The Neighbour also advised of a hospitalization in the family because of the smoke. The Neighbour blames the Landlord and as a result, the Landlord is facing potential legal action from the Neighbour due to the Tenant's continued smoking.
16. Based on the foregoing, and the fact that the Tenant did not attend the hearing to disclose any circumstances for me to consider relief from eviction, relief shall not be granted.

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 November 26, 2023.
2. If the unit is not vacated on or before November 26, 2023, then starting November 27, 2023, 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 November 27, 2023.

4. The Tenant shall also pay the Landlord compensation of \$87.55 per day for the use of the unit starting November 2, 2023 until the date the Tenant moves out of the unit.
5. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
6. The Landlord owes \$2,783.55 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. If the Tenant does not pay the Landlord the full amount owing on or before November 26, 2023, the Tenant will start to owe interest. This will be simple interest calculated from November 27, 2023 at 7.00% annually on the balance outstanding.

November 15, 2023

Date Issued

Camille Tancioco

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 May 27, 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.