



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

Citation: Taafe v Ripley, 2023 ONLTB 70009

Date: 2023-11-09

File Number: LTB-L-043668-23

In the matter of: Basement, 201 CELINA ST
OSHAWA ON L1H4N7

Between: Kim Taafe Landlord

And

Catherine Ripley Tenant

Kim Taafe (the 'Landlord') applied for an order to terminate the tenancy and evict Catherine Ripley (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.

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 19, 2023.

The Landlord's Representative, Carrie Aylwin, the Landlord's Witnesses, Mike Hulford, Constable Harrison, and Natasha Vallee, the Landlord, 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. Therefore, the tenancy between the Landlord and the Tenant is terminated as of December 15, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.

3. The rental complex is a detached bungalow divided into two units: a main floor unit and a basement unit. The Tenant has resided in the basement unit since February 2021.
4. The hot water tank, furnace and electrical breaker box for the whole rental complex is in a storage area which is part of the Tenant's rental unit.
5. On May 10, 2023, the Landlord gave the Tenant an N5 notice of termination deemed to be served on May 15, 2023. The notice of termination contains the following allegations:
 - From April 11 to April 30, 2023, the Tenant excessively contacted the Landlord by both text message and phone in a manner tantamount to harassment.
 - On April 14, 2023, the Landlord discovered that the Tenant tampered with ceiling heat registers that had just been repaired in March 2023.
 - From April 17 to April 22, 2023, the Tenant made multiple complaints of pest issues, however the photographic evidence did not show any issues. On April 22, 2023, the Landlord offered to have a pest control company enter the rental unit, however the Tenant refused to have them enter the unit.
 - On April 21, 2023, the Tenant contacted the Landlord about a clog in a drain, but then refused to allow a plumber to enter to address the clog.
 - On April 22, 2023, made false statements to Enbridge about a gas leak for the purpose of confirming whether a drug lab was located in the rental unit above the Tenant's unit,
 - On dates from April 26 to May 8, 2023, allegedly tampering with the hot water tank which supplies hot water to the whole rental complex.
6. On May 10, 2023, the Landlord gave the Tenant an N6 notice of termination deemed to be served on May 15, 2023. The notice of termination alleges that the Tenant has committed the following illegal acts:
 - Criminal Harassment, and
 - Mischief, as defined in the *Criminal Code*.
7. The Tenant did not stop the conduct or activity within seven days after receiving the N5 notice of termination. According to the Landlord, the Tenant continued to make frivolous complaints, and interfered with the Landlord's legal rights by taking the Landlord's property that he had stored in the garage, disposing of the property at the dump, and then sending the invoice of the disposal to the Landlord.

Landlord Evidence

8. The Landlord testified that on February 2, 2023, the Landlord served the Tenant with an N8 Notice to Terminate because the Tenant was persistently paying the rent late. On April 11, 2023, the Landlord filed an L2 based on that N8. The Landlord informed the Tenant that he had made an application to the Board based on the N8 notice that same day.
9. The Landlord testified that up until he had informed the Tenant of his filing of the application, there were no other issues between the parties.

10. The Landlord testified that from April 11 to April 30, 2023, the Tenant sent 185 text messages, and left 7 voicemails for the Landlord. All of the emails were complaints about the maintenance of the property as well as concerns with the gas line leading to the hot water tank and the electrical supply throughout the rental unit. The Tenant also showed a substantial amount of concern about a rental unit located above her unit that was not fully emptied of the last Tenant's property. The Landlord presented a copy of the text threads as evidence to corroborate the Landlord's testimony.
11. The Landlord presented one text as evidence on April 21, 2023, asking the Tenant to limit her texts to important issues only, and that he would address them as soon as possible.
12. The Landlord testified that although the text messages have slowed down, there are still many frivolous complaints coming in.
13. The Landlord testified that he was receiving multiple reports from the utility supply companies that service the rental complex about a Tenant making frivolous complaints to them. The Landlord stated that despite the complaints, no warnings or orders were ever issued against him or his property.
14. The Landlord testified that on April 14, 2023, the Landlord discovered that the Tenant was removing the airflow vents (registers) from the ceiling, and damaging them, despite the registers just recently having been repaired.
15. The Landlord testified that on April 17, 2023, the Tenant informed the Landlord that there was an infestation in the unit. The Tenant sent a picture of one insect into the Landlord as evidence. The Landlord stated that the bug was neither a cockroach or a bed bug, and that since it was a basement apartment, it was not uncommon to have the occasional insect be in the unit. On April 22, 2023, the Tenant sent another picture to the Landlord of a different insect, and like the last picture, showed only one insect.
16. The Landlord testified that he informed the Tenant that he could have a pest control company come into the unit to inspect and treat if necessary. The Tenant refused this request, stating that she had a friend who come in and treat the unit, as long as the Landlord paid this friend.
17. The Landlord testified that on April 22, 2023, the Tenant had tampered with the hot water heater. The hot water had been turned off. Also, the Landlord stated that the gas company was called in due to a reported gas leak. When the gas company attended, there was no gas leak discovered. The police were also called to the rental complex because the Tenant claimed that there was potentially a drug lab in the rental unit directly above her unit. The Landlord had a maintenance person attend the unit to open the door for the police. The parties present discovered that the rental unit and that there was no sign or any rational reason why anyone would assume there was a drug lab in that rental unit.
18. The Landlord's Witness, Mike Hulford (MH), testified that he was the maintenance person contacted by the Landlord to come let the police in to the rental unit above the Tenant's rental unit on April 22, 2023. When MH entered the unit, he discovered that the unit was still vacant and had no drug making equipment in it.

19. The Landlord's Witness, Constable Harrison (CH), also testified to having entered the unit after MH attended to open the door and determined that there was no drug lab located in the rental unit above the Tenant's rental unit.
20. Neither MH or CH smelled any gas leak or witness any evidence of a gas leak being present at the rental complex.
21. CH felt that the Tenant had falsified these complaints. CH stated that he cautioned the Tenant that the next time the police attended the rental complex based on fake complaints, the Tenant may be charged with mischief.
22. The Landlord testified that the gas company employee had left the hot water tank but had to return to the unit to retrieve a tool, and when he did so, observed the Tenant tampering with the hot water tank again. The control knob had been turned to the off position. It should be noted that no one from the gas company testified at this hearing, therefore this evidence is hearsay and will hold less weight when considered in the order.
23. The Landlord testified that on April 26, 2023, the Tenant had contacted the hot water tank company about the hot water tank not working. The Landlord stated that when the company entered to investigate the issue, they had discovered that the only problem was that the hot water control had been turned off.
24. The Landlord testified that on May 8, 2023, the Landlord had received a complaint of the hot water being turned off, this time by the tenant who had just moved into the unit above the Tenant's rental unit. That same day, the gas company had been called in again to investigate a gas leak. It had been determined that there was no gas leak, and that the Tenant had tampered with the controls of the hot water tank again.
25. The Landlord's Witness, Natasha Vallee (NV), testified that she and her family live in the rental unit above the Tenant's rental unit and have lived there since May 1, 2023.
26. NV testified that on May 8, 2023, the hot water was turned off in the rental unit. NV notified the Landlord of the issue. While NV was waiting for the hot water tank repairperson to attend, a person from the gas company said they were there to investigate a gas leak, and asked if she was "Catherine".
27. NV testified that once the repairperson attended the complex, hot water was restored.
28. NV testified that she did not smell anything that would suggest a gas leak at any time during her tenancy.
29. The Landlord testified that on May 16, 2023 (the beginning of the voiding period for the N5 notice), the Tenant entered the garage, of which the Tenant had not been permitted entrance to, and removed some of the property from the garage, and called for a waste management company to come dispose of the items. The property that the Tenant had disposed of belonged to the former tenant of the unit upstairs and to the Landlord. The Tenant then presented the Landlord with the bill for the disposal of the property.
30. NV testified that on May 20, 2023 (within the voiding period of the N5 notice), the power to her rental unit would turn off and on, generally just after the Tenant had mentioned that she thought there was something wrong with the power. NV stated that she suspects that the Tenant, who has access to the breaker box, may have turned the power on and off a few

times. NV stated that if it had been a breaker issue, the power would just stay off until the power was reset.

31. The Landlord is seeking an order to terminate the tenancy because the actions outlined in the Landlord's evidence have substantially interfered with the Landlord's legal rights and privileges, as well as with the reasonable enjoyment of the rental unit of other tenants in the rental complex. The Landlord also maintains that the Tenant engaged in illegal activity by making false complaints to the municipality and the utilities regarding gas leaks, as well as by sending excessive texts and phone calls to the Landlord. The Landlord feels that the tenancy should be terminated due to illegal acts committed by the Tenant.
32. Therefore, the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).

Tenant Evidence

33. The Tenant did not deny making an excessive number of texts and phone calls to the Landlord, however the Tenant felt that the Landlord was not satisfied with the answers she was getting from the Landlord. The Tenant felt that the Landlord was ignoring issues that she felt were important such as electrical issues, bad odours, a gas leak and pests.
34. The Tenant admitted to making several non-emergency complaints to the municipality, and that none of these complaints have resulted in an order or warning to the Landlord.
35. The Tenant claims that the gas line to the furnace and the hot water tank might have a leak. The Tenant claimed that the gas smells would cause her to feel light-headed and nauseous. She also claimed that the hot water tank would turn off on its own.
36. The Tenant testified that she did have a friend who did pest treatments who could treat the rental complex for 50% less than what the Landlord's company could. However, the Tenant also testified that since the new tenant moved in upstairs and cleaned up the place, there has no longer been a need for pest control to enter the property for treatments.
37. The Tenant testified that the reason she called the gas company and the police on April 22, 2023, was because she was uncertain that the unit was vacated and wanted to confirm that the unit was not being used as a drug lab.
38. The Tenant testified that she did clean all of the garbage out of the garage in the rental complex. She did so because she felt that there could be a mouse or rat infestation if she did not take action. The Tenant admitted to having disposed of property out of the garage that was not her property. The Tenant claimed that she discovered mouse feces, but no evidence was submitted to corroborate this claim.
39. The Tenant denied having tampered with either the hot water tank or the electric breakers, however, did admit to turning off the heat on April 22, 2023, to determine if there was a gas leak, or a drug lab operating in the rental complex.
40. The Tenant testified that she is still making non-emergency calls to the city about the rental unit, submitting a complaint about pest issues dated for September 13, 2023, or 6 days

prior to the hearing. The Tenant admitted at the hearing that the pests being reported about were neither bedbugs or cockroaches.

41. The Tenant testified that she has three children living with her in the rental unit, 17, 14 and 11 years old. When asked if they live full time with her, she initially said yes, but appeared to backtrack a bit which made it uncertain if the children do live with her full time.
42. When asked if the Tenant had any conditions that the Board should take into consideration, the Tenant stated that she has no disabilities to consider and is not receiving any financial assistance.
43. The Tenant stated that she would like to preserve the tenancy. The Tenant maintains that she has done nothing to warrant the termination of her tenancy.

Analysis- N5 Notice

44. 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.

45. The Landlord's N5 notice stated that the Tenant was harassing the Landlord by sending a substantial number of texts.
46. Although the term harassment is not defined in the Act, the Board often applies the following definition from the *Ontario Human Rights Code*: "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome."
47. Although I agree that the number of texts could easily be construed as being difficult to deal with, or inconvenient, I do not believe that the purpose of sending the texts were meant to "harass" or substantially interfere with the Landlord. The texts were either requesting a repair, whether it was warranted or not, or were giving insight into the Tenant's actions, such as cleaning the garage.
48. Furthermore, after the Landlord told the Tenant to only contact him if there was a serious issue, the texts appear to have become less frequent. I state this because the Landlord did not present any evidence showing that the number of texts had continued to be an issue.
49. Therefore, I am not satisfied that the texts meet the definition of harassment.
50. The Landlord claimed that the Tenant was making calls to emergency services on a regular basis, which then forced a third-party to get involved. These third parties were either the municipality, the police, or the gas company. The police, at one point, gave the Tenant a warning about making false claims.

51. Based on the evidence before me, I am satisfied that all the complaints to these companies and government bodies were baseless. However. These baseless complaints would cause the power to be turned off, or the gas line would have to be turned off because of having to investigate a gas leak for every single complaint. This process turns off the gas to the furnace and the hot water heater.
52. Regarding the incident on April 22, 2023, the Tenant appears to have made the complaint about a potential drug lab in the rental unit above the Tenant based solely on her own curiosity. At the hearing, the Tenant did not really display any regret or remorse for having caused so much trouble for no legitimate reason.
53. I am satisfied that the Tenant's actions regarding the excessive complaints to the police, the fire department, the gas company, and the municipality, is substantially interfering with the Landlord's reasonable enjoyment of the rental unit as well as the Landlord's legal rights.
54. The Landlord has also claimed that the Tenant has directly tampered with the delivery of vital services to the rental complex, and as result has substantially interfered with the reasonable enjoyment and the legal rights of the Landlord and other tenants in the rental complex.
55. NV witnessed the power to her rental unit go off and then back on a number of occasions, however the power did not appear to turn off due to the breaker being engaged due to overloading. If the breaker was engaged, the power would have stayed off because the breaker would have been tripped. Instead, NV describes the power as being turned off and then back on multiple times, in succession. Furthermore, the power outage was not generalized throughout the unit, but only centered on specific outlets and light switches.
56. NV testified that the power being turned on and off in such a manner damaged some of her electronic devices, such as a computer.
57. NV and MH both testified to having witnessed tampering with hot water delivery. MH testified to having seen the temperature gauge on the tank having been turned down. NV has experienced the hot water temperature fluctuating from a normal heat to going down to lukewarm.
58. The Tenant claimed that the breaker was faulty, however this contradicted the evidence of the Landlord and MH who both stated that the breaker was not malfunctioning.
59. The Landlord and MH have both given testimony to the hot water tank having been inspected on multiple occasions, only for it to be determined that the hot water tank was in good repair.
60. The Tenant denied having tampered with either the breaker board or the hot water tank, although, she would later admit to being concerned with gas leaks and electrical issues and would do what she thought was necessary to investigate the issues, including at one point, turning off the furnace.
61. Based on a balance of probabilities, I am satisfied that the Tenant is tampering with the hot water tank as well as the electrical service, therefore, the Tenant is substantially interfering

with both the Landlord's and other tenants' legal rights and reasonable enjoyment of the rental unit.

Analysis- N6

62. The Landlord served a notice to the Tenant stating that the Tenant engaged in illegal activities by harassing the Landlord and for "mischief" due to the false claims of gas leaks, drug labs being set up in another rental unit, and baseless complaints to bylaw, and gas company officials.

63. Section 61(1) of the Act states:

61 (1) A landlord may give a tenant notice of termination of the tenancy if the tenant or another occupant of the rental unit commits an illegal act or carries on an illegal trade, business or occupation or permits a person to do so in the rental unit or the residential complex.

64. The Landlord is alleging that the Tenant committed the crime of harassment pursuant to section 264(1) of the *Criminal Code* which states:

264 (1) No person shall, without lawful authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, engage in conduct referred to in subsection (2) that causes that other person reasonably, in all the circumstances, to fear for their safety or the safety of anyone known to them.

65. Based on the evidence before me, I am not satisfied that the Tenant committed the act of harassment as is defined under the *Criminal Code*. No evidence was presented at the hearing that the Tenant ever uttered anything, or acted in such a manner, that caused the Landlord or another tenant to fear for their safety. Therefore, this claim of illegal activity is dismissed.

66. The Landlord alleged that the Tenant committed the crime of "Mischief". Section 430(1) of the *Criminal Code* states:

430 (1) Every one commits mischief who wilfully

- (a) destroys or damages property;
- (b) renders property dangerous, useless, inoperative or ineffective;
- (c) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property; or
- (d) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.

67. The Landlord's claim is that the Tenant committed the crime of mischief by tampering with the vital services and by calling in multiple fake claims of gas leaks.
68. The Landlord's Witness, CH, who is a police officer, testified that he warned the Tenant that the next time she called in a false claim of a gas leak, he would charge her with mischief. Despite the evidence before CH, it was not deemed serious enough to charge the Tenant with mischief.
69. In *Swansea Village Co-operative Inc. v. Balcerzak*, 1988 CanLII 4844 (ON SC), [1998] O.J. No. 84, 63 O.R. (2d) 741 (Ont. Div. Ct.), the court found that there can be eviction for an isolated illegal act, but the illegal act cannot be trivial. It is necessary the offence has the potential to affect the character of the premises or disturb the reasonable enjoyment of the Landlord or other tenants.
70. According to *Balcerzak*, the crime committed cannot be trivial. The Landlord's witness, CB, did not charge the Tenant with mischief at that point. Had the Tenant been charged, I might have been more willing to accept that the crime the Tenant is accused of committing was serious enough to affect the character of the premises. However, on April 22, 2023, with both the Tenant and police officer both present at the same rental complex, the police still did not find that the incident was serious enough to warrant a charge of "mischief".
71. Based on evidence before me, I am not satisfied that the illegal activity that the Tenant is accused of is anything more than trivial at best. Therefore, the Landlord's claims that the Tenant committed illegal acts is denied.

Daily Compensation & Rent Deposit

72. The Tenant was required to pay the Landlord \$4,643.67 in daily compensation for use and occupation of the rental unit for the period from June 6, 2023, to September 19, 2023.
73. Based on the Monthly rent, the daily compensation is \$43.81. This amount is calculated as follows: $\$1,332.50 \times 12$, divided by 365 days.
74. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
75. The Landlord collected a rent deposit of \$1,300.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$39.02 is owing to the Tenant for the period from December 31, 2020, to September 19, 2023.
76. 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

77. Section 83(1)(2) of the Act states:

83 (1) Upon an application for an order evicting a tenant, the Board may, despite any other provision of this Act or the tenancy agreement,

- (a) refuse to grant the application unless satisfied, having regard to all the circumstances, that it would be unfair to refuse; or
- (b) order that the enforcement of the eviction order be postponed for a period of time. 2006, c. 17, s. 83 (1).

Mandatory review

(2) If a hearing is held, the Board shall not grant the application unless it has reviewed the circumstances and considered whether or not it should exercise its powers under subsection (1).

- 78. The Tenant testified that she has three children that reside with her, ages 17, 14 and 11 years old. The eldest child receives assistance for autism.
- 79. The Tenant testified that she did not have any disabilities or any other considerations that could be made when contemplating section 83 of the Act.
- 80. The Tenant stated that she has not stopped informing the municipal property standards bylaw of issues at the rental unit and as late as September 2023, the Tenant had just made a new complaint about pests, despite having just admitted earlier in her testimony that there was no longer a pest problem at the rental complex.
- 81. The Tenant did not admit to having made a mistake in making the false claims, and if anything, I found that throughout her submissions, she felt justified in making the false statements.
- 82. Had the Tenant shown a bit of regret or admitted some wrongdoing at the hearing, I might have considered a conditional order on this application. However, based on the Tenant's demeanour at the hearing, I am not satisfied that the Tenant would adhere to a conditional order.
- 83. Therefore, I find that it would be unfair to deny the Landlord's application, and an order for termination shall be granted.
- 84. However, I find that it would not be unfair, under section 83(1)(b) of the Act to postpone the eviction date until December 15, 2023.

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 15, 2023.
- 2. If the unit is not vacated on or before December 15, 2023, then starting December 16, 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 December 16, 2023.

4. The Tenant shall pay to the Landlord \$4,643.67, less any rent that has been paid since the termination date stated on the N5. This sum represents compensation for the use of the unit from June 6, 2023, to September 19, 2023.
5. The Tenant shall also pay the Landlord compensation of \$43.81 per day for the use of the unit starting September 20, 2023, until the date the Tenant moves out of the unit.
6. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
7. The Landlord owes \$1,339.02 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.
8. The total amount the Tenant owes the Landlord is \$3,490.65.
9. If the Tenant does not pay the Landlord the full amount owing on or before November 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 1, 2023, at 7.00% annually on the balance outstanding.

November 9, 2023

Date Issued

15 Grosvenor Street, Ground Floor,
Toronto ON M7A 2G6

Robert Brown

Member, Landlord and Tenant Board

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 June 16, 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.