



Order under Section 69 / 88.1
Residential Tenancies Act, 2006

Citation: Rubin v Dubavik, 2023 ONLTB 74162

Date: 2023-11-08

File Number: LTB-
L-042296-22

2023 ONLTB 74162 (CanLII)

In the matter of: basement unit, 314 SENLAC RD North
York ON M2R1R1

Between: Eugenia Rubin Landlord

And

Aliaksandr Dubavik Tenant

Eugenia Rubin (the 'Landlord') applied for an order to terminate the tenancy and evict Aliaksandr Dubavik (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the building has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord in a building that has three or fewer residential units and the Landlord resides in the building.

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

Eugenia Rubin (the 'Landlord') also applied for an order requiring Aliaksandr Dubavik (the 'Tenant') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's conduct or that of another occupant of the rental unit or someone the Tenant permitted in the residential complex. This conduct substantially interfered with the Landlord's reasonable enjoyment of the residential complex or another lawful right, privilege or interest.

This application was heard by videoconference on January 10, 2023 August 28, 2023.

The Landlord and the Landlord's Legal Representative and the Tenant and the Tenant's Legal Representative attended the hearing that was held on January 10, 2023.

Only the Landlord and the Landlord's Legal Representative, E. Aptekar attended the hearing on August 28, 2023.

As of 2:00 p.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.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On July 27, 2022, the Landlord gave the Tenant an N7 notice of termination with a termination date of August 6, 2022. The notice of termination contains the following allegations:
 - On July 16, 2022 at 4:30 p.m., The Tenant was drunk and insisted that the Landlord eat fish with you in a rude manner and called the Landlord baby and a little sun making the Landlord uncomfortable.
 - July 16, 2022 at 8:30 p.m., the Tenant was drunk in the backyard making loud noises, cursing, and spitting on the ground. You demanded that the Landlord sit down with you and when the Landlord refused, you said "everyone likes it, you don't"
 - On July 20, 2022 at 6:30 p.m., the Tenant behaved indecently leaving the washroom door open while sitting on the toilet. The Tenant screamed at the Landlord asked that the Landlord join you and cursed and threatened the Landlord. You said to the Landlord "You will die here"
4. The building has three or fewer residential units.
5. The Landlord lives in the building.
6. The Landlord testified that on July 16, 2022 at around 4:30 p.m., she was returning home from synagogue. She went into the backyard of the complex with her dog. The tenant was there and engaged in a conversation with the Landlord where he called her "baby". The Landlord and the Tenant are both Russian, and the phrase the Tenant used towards the Landlord was "little sun", which is a term of endearment in Russian. The Tenant asked the Landlord to join him to eat fish, and she refused. The Tenant kept insisting the Landlord join him and again repeated the term "little sun" The Landlord testified that she felt uncomfortable and an got a very bad feeling, like the Tenant was trying to force her to do something she did not want to do.
7. The Landlord testified that on that same day, later in the evening, approximately 8:30 p.m., the Tenant was in the backyard with his guest. He was drunk and very loud, was cursing and swearing and demanded that the Landlord sit down with him. She refused to sit down, she asked him to stop speaking so loudly and he stood up and pulled his pants down and said he was going to urinate by the shed. The Landlord testified that she felt scared by the Tenant's behaviour.

8. The Landlord testified that on July 20, 2022 at approximately 6:30 p.m., she heard a loud noise from the shared laundry room in the basement, where the Tenant's unit is located. The Landlord went down to see what was going on and when she did, the laundry room door was open and the door to the Tenant's unit was open wide. She testified that the Tenant's bathroom is visible from the entrance and the Tenant was sitting on the toilet, naked. When the Tenant saw the Landlord there, he asked the Landlord to come in and he would cook. The Landlord testified that her legs felt numb, and her body was shaking.

She testified that the Tenant approached her and staring yelling at her and said "you will die here"

9. The Landlord testified that since the service of the notice, things have not gotten any better. She testified that she is scared to use her laundry room so she goes to a laundromat.

Analysis

10. Subsection 65 (1) of the Act states:

Termination for cause, reasonable enjoyment of landlord in small building

65 (1) Despite section 64, a landlord who resides in a building containing not more than three residential units may give a tenant of a rental unit in the building notice of termination of the tenancy that provides a termination date not earlier than the 10th day after the notice is given if the conduct of the tenant, another occupant of the rental unit or a person permitted in the building by the tenant is such that it substantially interferes with the reasonable enjoyment of the building for all usual purposes by the landlord or substantially interferes with another lawful right, privilege or interest of the landlord

11. Based on the uncontested evidence before me, I find on a balance of probabilities, the Tenant has substantially interfered with the Landlord's enjoyment of the building by the conduct described above.
12. It is the Landlord's uncontested testimony that the actions described above made her feel scared and unsafe in her home. I find that this constitutes a substantial interference.
13. The Tenant was required to pay the Landlord \$17,812.60 in daily compensation for use and occupation of the rental unit for the period from August 7, 2022 to August 28, 2023.
14. Based on the Monthly rent, the daily compensation is \$46.03. This amount is calculated as follows: \$1,400.00 x 12, divided by 365 days.
15. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
16. The Landlord collected a rent deposit of \$1,400.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$39.41 is owing to the Tenant for the period from July 14, 2022 to August 28, 2023.
17. 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.

Claim for compensation for substantial interference

18. The Landlord claimed an amount related to cameras she purchased as a result of the Tenant's behaviour as described above. She testified that she purchased the cameras as a direct result of feeling scared in her own home.
19. The Landlord submitted a receipt from best buy in the amount of \$903.97 relating to the cameras she purchased. The Receipt is dated July 21, 2022. This purchase was made within days of the behaviour alleged in the N7 notice of termination.
20. Section 88.1 of the Act states:

88.1 (1) A landlord may apply to the Board for an order requiring a tenant or former tenant to pay costs described in subsection (4) if,

- (a) while the tenant or former tenant is or was in possession of the rental unit, the conduct of the tenant or former tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant or former tenant is or was such that it substantially interferes or interfered with,
 - (i) the reasonable enjoyment of the residential complex for all usual purposes by the landlord, or
 - (ii) another lawful right, privilege or interest of the landlord;

21. Section 88.1 (4) of the Act states:

Compensation for interference with reasonable enjoyment, etc.

(4) The costs referred to in subsection (1) are reasonable out-of-pocket expenses that the landlord has incurred or will incur as a result of an interference described in clause (1) (a)

22. I find that the Landlord has incurred reasonable out-of-pocket expenses of \$903.97. These expenses were incurred as a result of the substantial interference.
23. 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.

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 19, 2023.

2. If the unit is not vacated on or before November 19, 2023, then starting November 20, 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 20, 2023.
4. The Tenant shall pay to the Landlord \$17,812.60, (less any payments made since the termination date on the N7 notice) which represents compensation for the use of the unit from August 7, 2022 to August 28, 2023.
5. The Tenant shall also pay the Landlord compensation of \$46.03 per day for the use of the unit starting August 29, 2023 until the date the Tenant moves out of the unit.
6. The Tenant shall pay to the Landlord \$903.97, which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the substantial interference.
7. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
8. The Landlord owes \$1,439.41 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.
9. The total amount the Tenant owes the Landlord is \$17,463.16. (less any payments made since the termination date on the N7 notice)
10. If the Tenant does not pay the Landlord the full amount owing on or before November 13, 2023, the Tenant will start to owe interest. This will be simple interest calculated from November 14, 2023 at 7.00% annually on the balance outstanding.

November 8, 2023

Date Issued

Emily Robb

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 14, 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.