



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

**Citation:** Webster v McLeod, 2023 ONLTB 73159

**Date:** 2023-11-08

**File Number:** LTB-L-054045-22

**In the matter of:** 1780 Highway 48  
Kirkfield Ontario K0M2B0

**Between:** Allen Webster Landlord

**And**

Michael McLeod Tenants  
Cindy Alarco McLeod

Allen Webster (the 'Landlord') applied for an order to terminate the tenancy and evict Michael McLeod and Cindy Alarco McLeod (the 'Tenants') because the Tenants, another occupant of the rental unit or someone the Tenants 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 Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on June 26, 2023. The Landlord and the Tenants attended the hearing.

**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. However, the tenancy will continue if the Tenants meet the terms set out in this order.
2. The Tenants were in possession of the rental unit on the date the application was filed.

**N5 Notice of Termination - Substantial interference**

3. On April 30, 2022, the Landlord gave the Tenants an N5 notice of termination by personal service. The notice of termination contains the following allegations:
  - Illegal possession and selling of Landlord's property (unidentified)
  - Unlicensed scrap automobile, parts and tires stored on the property
  - Failure to produce Tenant's insurance
  - Damage to lawns
  - Animal and fowl excrement around the property
  - Unlawful use of shed/barn on the property

4. The Tenants did not stop the conduct or activity or correct the omission within seven days after receiving the N5 notice of termination. The issues raised by the Landlord were not complied with fully by the deadline and therefore, the Tenants did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).
5. At the hearing the Landlord revised his list of allegations. The Tenants have provided him with proof of insurance and they have rectified the damage to the lawn on the rental property. Accordingly, I find that these issues have been resolved and are struck from the application.
6. The Landlord seeks for the Tenants to clean up the property and dispose of the scrap, junk, etc., that they have been storing on the property and to remove the ducks and chickens from the property. He also seeks for the trailer in the yard to be moved to the back of the property.
7. The Tenants agreed to clean up the property and shed and dispose of all garbage and refuse within 3 weeks. They are also willing to remove the fowl from the property.
8. The remaining issues I must make a determination on are:
  - ownership and storage of a 5<sup>th</sup> wheel trailer on the property
  - ducks and chickens on the property
9. The Landlord testified that he owns several rural farms and uses his tractor at all of the properties, moving and storing it in various locations as needed. He testified that he found his shed padlocked at some point in March or April 2022 and could not access it to put his tractor inside. He also discovered that the Tenants had taken over the shed by filling it with stuff and also housing ducks and chickens in the shed. He testified that the Tenants moved an old trailer from the back of his property which is now sitting in the middle of the yard, which the tenants are housing their chickens and ducks in. He testified that he did not authorize for the chickens and ducks to be on the property and does not like how “junky” the yard looks. Tenants were only rented the house and yard, not any of the outbuildings. In re-direct evidence the Landlord testified that he wasn’t sure if the trailer in the middle of the yard was the one from the back of his property or not. He testified that he didn’t pay much attention to the condition of the trailer; he only knows that there was one on the property, sheltered in the trees when he bought it and it is now gone.
10. The Tenant CM testified that there was never a lock on the shed and they never installed one. They had requested use of a middle shed from the Landlord who told them it was no problem. They did use the shed originally for storage and housing ducks and chickens. They are willing to clean out and discontinue using the shed. They believed that the Landlord was agreeable to the chickens and ducks, he brought his grandchildren to see them and they give the Landlord free eggs regularly. She testified that the trailer being used by them for their chickens and ducks is their own 27-foot 5<sup>th</sup> wheel trailer which they purchased from a trailer park in May 2020 and moved it to the rental property. The trailer is very old. Over time, they moved the chickens and ducks from the shed to the trailer and the chickens and ducks currently live in it. She testified that they do clean up after all of the animals and will continue to do so. In the interest of preserving the Tenancy, the Tenants have started to clean up the property and undertake to have it completed in 3 weeks. They are willing to have all ducks and chickens as well as the trailer removed from the property.

## Analysis

11. Section 64(1) of the *Residential Tenancies Act, 2006* (the 'Act') states the following:

"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."

12. In analysing the allegations of the Landlord, I am persuaded, in part by the Landlord's evidence that the Tenants have utilized the rental property for storage of scrap, tires, refuse, etc., and that they have brought in fowl which was not authorized. I am also persuaded that the Tenants do not sufficiently clean up after their animals. I find that these incidents constitute substantial interference as defined by section 64 of the Act.
13. I am not persuaded that the Tenants removed property belonging to the Landlord and disposed and/or sold it. There was insufficient evidence led by the Landlord in this regard. Further, the Landlord did not specifically set out in the N5 notice that a trailer was missing. No photographs, ownership documents or police reports were submitted to support the allegation. Therefore, this portion of the Landlord's application is dismissed.
14. Based on the evidence before me and on a balance of probabilities, I prefer the evidence of the Tenants regarding ownership of the 5<sup>th</sup> wheel camper trailer in the yard. I find the testimony of CM to be direct and concise with details about where they bought the trailer from and when. She was specific about the size and model of the trailer. The Landlord could not identify if this was the same trailer from the back of his property or not. With that said, the trailer is currently being used to house ducks and chickens and is likely to be considered as scrap. The Tenants are willing to have their chickens and ducks removed from the property along with the trailer, if the Board so orders.
15. The Tenants are willing to remove their items from the shed and clean up the entire property in the interest of preserving the tenancy. They have started the clean up as a show of their good faith.
16. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
17. The Landlord collected a rent deposit of \$1,250.00 from the Tenants and this deposit is still being held by the Landlord.
18. 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

19. The Tenants wish to remain at the unit and are willing to clean up the property, remove the ducks and chickens from the property and the trailer they are housed in. 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. The Tenants will be afforded the opportunity to clean up and maintain the property in a state of ordinary cleanliness in order to continue living in the rental unit.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenants continues if the Tenants meet the conditions set out below.
2. The Tenants shall clean up the rental property and the shed by November 30, 2023 and shall maintain the property in a state of ordinary cleanliness and condition for the remainder of the tenancy. Specifically there shall be no storage or stockpiling of any scrap, debris, tires, refuse, etc.
3. The Tenants shall clean up after their dog(s) around the property daily.
4. The Tenants shall remove the ducks and chickens from the property on or before December 15, 2023.
5. The Tenants shall remove the 5<sup>th</sup> wheel trailer from the property on or before December 15, 2023.
6. If the Tenants fail to comply with the conditions set out in paragraph 2-5 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.
7. The Tenants shall pay to the Landlord \$201.00 for the cost of filing the application.
8. If the Tenants do not pay the Landlord the full amount owing on or before November 30, 2023, the Tenants will start to owe interest. This will be simple interest calculated from December 1, 2023 at 7.00% annually on the balance outstanding.

**November 8, 2023**

**Date Issued**

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Donna Adams

Member, Landlord and Tenants 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.