



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

Citation: Elite Property Group (2018) Inc. v Portiss, 2023 ONLTB 70841

Date: 2023-11-01

File Number: LTB-L-066106-22

In the matter of: 206, 233 DURAND ST
SARNIA ON N7T5A5

Between: Elite Property Group (2018) Inc.

Landlord

And

Belinda Portiss

Tenant

Elite Property Group (2018) Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Belinda Portiss (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 Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on October 18, 2023.

Only the Landlord's Agent, Karen Eckel, and the Landlord's Representative, Kate Schoffer, attended the hearing. Glenna Crozier and Joyce Lanyon appeared as witnesses for the Landlord.

As of 9:55 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 effective December 31, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N5 Notice of Termination

3. On September 20, 2022, the Landlord gave the Tenant an N5 notice of termination with a termination date of October 10, 2022. The notice of termination contains the following allegations:
 - the Tenant's guests were yelling outside up to the Tenant's balcony and throwing stones on September 17, 2022 at 11:00 p.m.
 - continuous smoking in the unit
4. At the onset of the hearing, I informed the Landlord that the allegation of smoking did not contain particulars in accordance with section 43(2) of the *Residential Tenancies Act, 2006* ("Act") and the Divisional Court's decision in *Ball v. Metro Capital Property*, [2002] O.J. No. 5931. No specific dates or times were listed on the notice. The Landlord subsequently withdrew this allegation, and the hearing proceeded with respect to the allegation of yelling.
5. Karen Eckel ("KE") provided oral testimony at the hearing and appeared as the Landlord's first witness. KE is the property manager of the complex and testified that she received a call in the evening of September 17, 2022 from Jenna, a tenant in the unit above the Tenant, informing her that guests of the Tenant were outside yelling up to the Tenant's balcony and throwing stones. Due to this, Jenna was upset and could not sleep.
6. On September 21, 2022, KE testified that Jenna emailed her again informing her that a guest of the Tenant was on the Tenant's balcony smoking and yelling at and insulting her.
7. KE testified that Jenna no longer resides in the property and vacated after Christmas 2022 due to the continuous disturbances from the Tenant and her guests.

L2 Analysis

8. The N5 notice is served pursuant to section 64 of the Act which states:
 - (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.
 - (2) A notice of termination under subsection (1) shall,
 - (a) provide a termination date not earlier than the 20th day after the notice is given;
 - (b) set out the grounds for termination; and
 - (c) require the tenant, within seven days, to stop the conduct or activity or correct the omission set out in the notice
 - (3) The notice of termination under subsection (1) is void if the tenant, within seven days after receiving the notice, stops the conduct or activity or corrects the omission.

9. In this case, the seven-day voiding period was from September 21 to September 27, 2022. The Tenant did not void the N5 notice termination in accordance with s.64(3) of the Act as the Tenant's guest in her unit disturbed another tenant on September 21, 2022.
10. Based on the uncontested evidence before me, I am satisfied on a balance of probabilities that the Tenant and her guests have substantially interfered with the reasonable enjoyment of another tenant. By not answering her guests and not setting up the building intercom system, the Tenant has enabled the disturbances caused by her guests.

Daily Compensation and Last Month's Rent Deposit

11. The Landlord testified that the Tenant is not in arrears.
12. Based on the Monthly rent, the daily compensation is \$29.94. This amount is calculated as follows: \$910.80 x 12, divided by 365 days.
13. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
14. The Landlord collected a rent deposit of \$900.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$47.54 is owing to the Tenant for the period from March 2, 2021 to October 18, 2023.
15. 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

16. 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 postpone the eviction until December 31, 2023 pursuant to subsection 83(1)(b) of the Act
17. The Landlord submits that the disturbances are ongoing and continues as of the hearing date. I am persuaded by the Landlord's witnesses' uncontested evidence and testimony that the Tenant has permitted her guests to repeatedly create excessive noise and nuisance by yelling and throwing items up to the Tenant's balcony.
18. Glenna Crozier ("GC") provided oral testimony at the hearing and appeared as the Landlord's second witness. GC is a current tenant residing in unit 307 above the Tenant's unit.
19. On July 30, 2023, GC testified that she observed a guest of the Tenant go to the back of the building yelling to the Tenant to let her in.
20. On August 8, 2023, GC testified that she observed a guest of the Tenant go to the back of the building yelling to the Tenant to let him in. The individual was there for 30 minutes before leaving.
21. GC testified that the Tenant's guests are regularly at the property and they are constantly yelling up to the Tenant's balcony and throwing sticks and rocks to get the Tenant to let them in. GC testified that sticks and rocks have been found on her balcony. As the Tenant does not have a phone connected to the building intercom system, the Tenant's guest

frequently buzzes other residents to be let in. These disturbances can occur at any time, and they have occurred late at night when she is asleep.

22. Joyce Lanyon ("JL") provided oral testimony at the hearing and appeared as the Landlord's third witness. JL is a current tenant residing in unit 207 which is the unit next to the Tenant's unit.
23. On August 22, 2023, JL testified that she sent an email to the Landlord with a note indicating that the Tenant's guest has been calling up to her unit, asking for the Tenant and have had sticks thrown up to her balcony on two occasions.
24. On September 7, 2023, JL testified that an individual was throwing sticks up to her window and when she questioned him, he told her he was looking for the Tenant.
25. Given that the disturbing conduct has continued and has significantly affected other tenants in the building, I find it would be unfair to deny eviction. The Landlord submitted that the Tenant has health issues and the rent is subsidized by ODSP and CMHA. Considering this, I find that it would not be unfair to grant a short delay of termination for the Tenant to secure alternative housing.

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 31, 2023.
2. If the unit is not vacated on or before December 31, 2023, then starting January 1, 2024, 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 January 1, 2024.
4. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
5. The Landlord owes \$947.54 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.
6. As of the date of the hearing, the amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the amount the Landlord is entitled to by \$761.54.
7. However, the Landlord is authorized to deduct from amount owing to the Tenant \$29.94 per day for compensation for the use of the unit starting October 19, 2023 to the date the Tenant moves out of the unit.
8. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

November 1, 2023

Date Issued

Vicky Liu

Member, Landlord and Tenant Board

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 July 1, 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.

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