



**Order under Section 69 / 88.1
Residential Tenancies Act, 2006**

Citation: JDN MANAGEMENT INC v Smibert, 2023 ONLTB 67308

Date: 2023-10-23

File Number: LTB-L-031281-22

In the matter of: 2, 720 QUEENS AVE LONDON
ON N5W3H5

Between: JDN PROPERTY MANAGEMENT INC Landlord

And

Kathy Smibert Tenants
Chris Smibert

JDN PROPERTY MANAGEMENT INC (the 'Landlord') applied for an order to terminate the tenancy and evict Kathy Smibert and Chris Smibert (the 'Tenants') because:

- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully or negligently caused damage to the premises.

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

JDN PROPERTY MANAGEMENT INC (the 'Landlord') also applied for an order requiring Kathy Smibert and Chris Smibert (the 'Tenants') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenants' conduct or that of another occupant of the rental unit or someone the Tenants 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 June 12, 2023.

Only the Landlord's representative, Tate MacMillian attended the hearing.

As of 3:28 p.m., the Tenants were 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/or the claim for compensation in the application. Therefore, the application is granted and the tenancy will terminate.
2. The Tenants were in possession of the rental unit on the date the application was filed.

N5 Notice of Termination

3. On May 18, 2022, the Landlord gave the Tenants an N5 notice of termination. The notice of termination alleges that the Tenants have wilfully or negligently caused undue damage to the rental unit by storing garbage and debris in common areas of the residential complex for over a year and have not addressed the debris issue despite the Landlord's requests. The area is a driveway that is shared between 4 rental units.
4. The Landlord's representative testified that the Tenants allowed debris to pile up in the backyard which is a common area and on the driveway shared between the Tenants and other residents in the residential complex. The other residents were not able to use the common areas. Since the application, the debris has escalated.
5. The Landlord testified and submitted pictures of the debris and garbage in the common area. In addition, the Landlord submitted an invoice from the City of London for the waste removal totaling \$450.28 that took place on April 28, 2022. The City of London also issued an invoice for \$125.00 for an additional inspection on April 28, 2022. The total amount of the invoices was \$575.28.
6. I am satisfied that the uncontested evidence provided by the Landlord establishes that the Tenants have regularly packed the shared common driveway with debris and garbage. This conduct has wilfully or negligently caused damage to the premises as the garbage was a health hazard for all in the residential complex. The debris also creates a health hazard for all in the residential complex on an ongoing basis.
7. The Tenants did not void the notice by paying the \$575.28 for domestic waste removal and the inspection fee within seven days after receiving the N5 notice of termination in accordance with section 62(3) of the *Residential Tenancies Act, 2006* (Act).. The voiding period was May 19- 25, 2022. The Landlord led evidence that the fines were paid by the Landlord but the Tenant has not reimbursed the Landlord. In addition to not paying the fines to void the notice, the debris and garbage in the driveway has continued.

Compensation for substantial interference

8. The Landlord has incurred reasonable out-of-pocket expenses of \$575.28. These expenses were incurred as a result of the Tenants' substantial interference, namely their storage of

significant amounts of debris in common areas of the residential complex. The debris creates a health hazard for all in the residential complex on an ongoing basis. This in turn causes the Landlord cost and inconvenience to eradicate the issue not just for these Tenants, but to also deter the infestations from multiplying and migrating to other units.

9. The out-of-pocket expenses were for the fines, removal of debris and inspection by the City of London. The City has charged the Landlord and the Landlord paid the fines on May 18, 2022.

Daily compensation, NSF charges, rent deposit

10. The Tenants were required to pay the Landlord \$12,237.37 in daily compensation for use and occupation of the rental unit for the period from June 8, 2022 to June 12, 2023. All rent payments made by the Tenants since June 8, 2022, must be subtracted from this amount.
11. Based on the Monthly rent, the daily compensation is \$33.07. This amount is calculated as follows: \$1,006.00 x 12, divided by 365 days.
12. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
13. The Landlord collected a rent deposit of \$995.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$53.25 is owing to the Tenants for the period from September 1, 2019 to June 12, 2023.
14. 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

15. 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.
16. The Tenants did not attend the hearing to give evidence of their circumstances and thus, I did not have the opportunity to hear their evidence regarding their circumstances or to dispute the Landlord's application for an eviction order.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before November 3, 2023.

2. If the unit is not vacated on or before November 3, 2023, then starting November 4, 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 4, 2023.
4. The Tenants shall pay to the Landlord \$12,237.37, which represents compensation for the use of the unit from June 8, 2022 to June 12, 2023.
5. The Tenants shall also pay the Landlord compensation of \$33.07 per day for the use of the unit starting June 13, 2023 until the date the Tenants moves out of the unit.
6. The Tenants shall pay to the Landlord \$575.28, which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the substantial interference.
7. The Tenants shall also pay to the Landlord \$186.00 for the cost of filing the application.
8. The Landlord owes \$1,048.25 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Tenants.
9. The total amount the Tenants owe the Landlord is \$11,950.40.
10. If the Tenants do not pay the Landlord the full amount owing on or before November 3, 2023, the Tenants will start to owe interest. This will be simple interest calculated from November 4, 2023 at 7.00% annually on the balance outstanding.

October 23, 2023

Date Issued

Camille Clyne

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 Tenants expires on May 4, 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.