



**Order under Section 69 / 89
Residential Tenancies Act, 2006**

Citation: 1173931 ONTARIO LIMITED v Bush, 2023 ONLTB 68420

Date: 2023-10-19

File Number: LTB-L-048048-22

In the matter of: 707, 190 ANN ST
BELLEVILLE ON K8N5G2

Between: 1173931 ONTARIO LIMITED

Landlord

And

Lindsey Bush

Tenant

1173931 ONTARIO LIMITED (the 'Landlord') applied for an order to terminate the tenancy and evict Lindsey Bush (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, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises.

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

1173931 ONTARIO LIMITED (the 'Landlord') also applied for an order requiring Lindsey Bush (the 'Tenant') to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

This application was heard by videoconference on September 6, 2023. The Landlord's agent Judy Bell and the Landlord's legal representative Ian Macinnis attended the hearing. As of 9:40 am, 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. I find the Tenant has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant(s). I also find the Tenant has wilfully or negligently caused damage inside the rental unit. The tenancy between the Landlord and the Tenant is terminated.

2. The Tenant still resides in the rental unit and the residential complex is an apartment building. The monthly rent is \$1,396.02 per month.

N5 notice

3. On July 29, 2022, the Landlord served a voidable N5 Notice to End your Tenancy For Interfering with Others, Damage or Overcrowding ('N5 notice') alleging that the Tenant's behaviour or the behaviour of someone visiting or living with them has substantially interfered with another tenant's or the Landlord's reasonable enjoyment of the residential complex or lawful rights, privileges, or interests. The N5 notice also alleges that the Tenant or someone visiting or living with the Tenant has wilfully or negligently damaged the rental unit or the residential complex.
4. The N5 notice contained the following allegations:
 - On June 20, 2022 at 10:00 am, the Property Manger and Building Manager detected a strong odour of cat urine in the hallway outside the Tenant's unit. When they inspected the unit, it was noted there were 5 cats inside the unit, the carpets were stained with cat urine, and the cats had clawed the carpet at the bathroom and bedroom doors. There was also excessive household garbage inside the unit;
 - On June 21, 2022, the Tenant moved household garbage onto the balcony of their unit; and
 - On June 27, 2022 at 10:00 am, the Superintendent conducted a follow-up inspection of the unit and found the household garbage had been removed but there was still a strong cat urine odour from the soiled carpets;
5. One N5 Notice was served pursuant to section 64 of the *Residential Tenancies Act, 2006* (the 'Act') which 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.

6. Notice

- (2) A notice of termination under subsection (1) shall,
1. provide a termination date not earlier than the 20th day after the notice is given;
 2. set out the grounds for termination; and
 3. require the tenant, within seven days, to stop the conduct or activity or correct the omission set out in the notice.

Notice void if tenant complies

- (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.

7. In accordance with section 64(3) of the Act, the first N5 Notice is voided if the Tenant does not engage in any further conduct of the type described in the N5 Notice during the 7-day period after the N5 Notice was given to the Tenant. In this case, that 7 day voiding period was July 30, 2022 to August 5, 2022.
8. An employee of the Landlord's property management company, Judy Bell ('Ms. Bell') testified that the Tenant did not stop the conduct or activity within seven days after receiving the N5 notice, and the damage to the carpet inside the rental unit has not been repaired/replaced by the Tenant. Ms. Bell states the damage to the carpet was caused by the Tenant's cats that live inside the rental unit. She states the damage to the carpet includes cat urine stains, claw marks, and carpet fibres pulled out from the carpet. She states the damage to the carpet exists throughout the rental unit.
9. Ms. Bell testified the Landlord first discovered the damage to the carpet during an inspection which took place on June 20, 2022 to investigate a cat urine odour emanating from the rental unit. Eleven photographs were taken during that inspection were produced for the hearing. The photographs show damage to the carpet in the bedroom which include several urine stains on the carpet, carpet fibres pulled from the carpet throughout the bedroom, and the carpet pulled apart and torn away from the baseboard at the entrance to the bedroom. The photographs showed stains on the carpet in the hallway, and claw marks and stains on the carpet at the entranceway to the living room and dining room. There are cats depicted within some of the photographs.
10. Ms. Bell testified that a follow-up inspection of the rental unit was conducted on June 27, 2022 and two photographs taken during that inspection show urine stains and carpet fibres pulled away from the carpet inside the bedroom of the rental unit.
11. Ms. Bell states that a further inspection was done on October 20, 2022 and in addition to the carpet damage still present, Ms. Bell states that she observed further damage to several doors inside the rental unit. She states there is a hole in one of the large closet doors, there are holes in each bedroom door and the door for the bathroom. She states that the Landlord is not claiming this damage but wants to raise this evidence at the hearing to support there is further damage to the rental unit which has occurred since the N5 notice was filed.
12. The Landlord requests termination of the tenancy and is requests the Tenant be ordered to pay for the damage to the carpet throughout the rental unit in the amount of \$3,200.18. A breakdown of these costs were produced for the hearing and include the following:
 - Written estimate dated July 4, 2022 which notes the cost remove and dispose of the existing carpet and carpet underlay is **\$1,047.96** inclusive of HST;
 - Written estimate dated July 16, 2022 from EMD Contracting for materials and labour to clean the concrete floor to remove the urine smell and then re-paint the floor in the amount of **\$664.45** inclusive of HST; and

- **\$1,487.77** which represents 40% of the pro-rated cost to replace the carpet inside the rental unit. This amount represents 40% of the invoice produced in the amount of \$3,719.42 inclusive of HST. The invoice is from Carpet One and is dated August 11, 2016. This invoice was for the cost of the carpet replacement which was completed for unit 707 at the residential complex address over six years ago;
13. The Landlord is entitled to its claimed costs in the amount of \$3,200.18. The Landlord will incur reasonable costs of \$3,200.18 to replace entire carpet inside the rental unit that was damaged and cannot be repaired. Based on the uncontested evidence of the Landlord, I find that there is significant damage to the carpet throughout the entire rental unit and I accept that it was caused by the Tenant's cats. I find the photographs produced for the hearing support the damage to the carpet inside the entire rental unit requires the entire replacement of the carpet inside the rental unit. I find the Landlord's claimed costs are reasonable as the Landlord is claiming 40% of the original replacement cost of the carpet for the rental unit in 2016. I find the costs to remove the existing carpet and underlay are also reasonable and are based on an estimate from July 2022. The photographs depicting several urine stains in the carpet and the Landlord's testimony regarding the strong urine smell inside the rental unit which led to the initial inspection of the rental unit on June 20, 2022 support. that cleaning and re-painting of the concrete floor is necessary. I accept these costs are reasonable based on the estimate provided from July 2022.
 14. Based on the monthly rent, the daily compensation is \$45.90. This amount is calculated as follows: \$1,396.02 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 \$1,396.02 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$55.75 is owing to the Tenant for the period from February 1, 2022 to September 6, 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.
 18. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The Tenant did not attend the hearing to proffer any evidence in response to the application filed by the Landlord or provide any submissions relating to subsection 83(1) of the Act for me to consider denying or postponing eviction.

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 October 30, 2023.
2. If the unit is not vacated on or before October 30, 2023, then starting October 31, 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 October 31, 2023.
4. The Tenant shall pay to the Landlord \$3,200.18, which represents the reasonable costs of replacing the damaged carpet inside the rental unit.
5. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
6. The Landlord owes \$1,451.77 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.
7. Therefore, the amount that the Tenant owes which the Tenant shall pay to the Landlord is \$1,934.41.
8. The Tenant shall also pay the Landlord compensation of \$45.90 per day for the use of the unit starting September 7, 2023 until the date the Tenant moves out of the unit.
9. If the Tenant does not pay the Landlord the full amount owing on or before October 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 31, 2023 at 7.00% annually on the balance outstanding.

October 19, 2023
Date Issued

Kimberly Parish
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 April 30, 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.