



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

Citation: Paramount Property Management v Pek, 2023 ONLTB 67918

Date: 2023-10-17

File Number: LTB-L-013293-23

In the matter of: 109, 2385 CARLING AVE
OTTAWA ON K2B7G9

Between: Paramount Property Management Landlord

And

Marie Patricia Pek Tenant

Paramount Property Management (the 'Landlord') applied for an order to terminate the tenancy and evict Marie Patricia Pek (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 September 7, 2023.

Only the Landlord's Representatives, David Lyman, the Landlord's Agent, Virginia Adams, and the Landlord's witnesses, Enkelion Begaj, and Colin Thomson, attended the hearing.

As of 1:47pm, 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. Therefore, the tenancy shall terminate on November 10, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed and is residing in the rental unit as of the date of the hearing.
3. On November 2, 2022, the Landlord served the Tenant a first, voidable N5 notice of termination. The notice alleged that the Tenant was yelling, screaming and disrupting other tenants in an aggressive manner in the rental complex. After the notice was served on November 2, 2022, the Tenant did not substantially interfere with the Landlord or other tenants for a period of seven days. Therefore, pursuant to section 64(3) of the *Residential Tenancies Act, 2006*, (the 'Act'), the notice was voided. Therefore, the Landlord was

allowed to give the Tenant a second, non-voidable N5 notice of termination under section 68 of the Act.

4. On February 1, 2023, the Landlord gave the Tenant a second N5 notice of termination by mail, which is deemed to be served on February 6, 2023, pursuant to section 191(3) of the Act. The notice of termination contains the following allegations:
 - Noise issues that occurred on November 25, 2022, December 2-4, 2022,
 - Entered the rental office to yell, and verbally threaten employees, and slammed the door on the way out of the office on January 17, 2023, and
 - Sent an email to the Landlord on January 18, 2023, which contained threats to physically harm employees and neighbours, and specifically, threatened to stab one tenant with scissors.
5. The Landlord's Witness, Colin Thomson (CT), has been a tenant in the rental complex since January 2022. CT has shared custody of his 8-year-old child. CW described living next to the Tenant as being "a nightmare".
6. CT testified that the Tenant would often go off on tirades, by yelling and screaming in her unit and using both profane and racist language. The Tenant would also slam doors on people and would react aggressively if people asked her to keep the noise down. CT stated that these outbursts from his neighbour would upset his child and made living in the rental unit difficult.
7. CT also testified that if he or his son made any noise whatsoever, be it washing dishes or walking to another room, the Tenant would yell and pound on the wall.
8. CT testified that on November 25, 2022, the Tenant yelled at him for making too much noise. CT stated that at the time, he was just walking to his rental unit entrance. After the Tenant slammed the door, he thought that he heard the Tenant threaten to kill him.
9. CT testified that on December 2 and December 3, 2022, the Tenant began making substantial amounts of noise starting at 7:30am and would continue to make noises throughout the day. The Tenant would mainly be yelling, but it also sounded as though the Tenant was slamming doors and/or other items in her rental unit.
10. Since December 3, 2022, CT has witnessed the Tenant become aggressive towards other tenants of the rental unit and staff, sometimes getting directly in their faces as to attempt to intimidate them.
11. CT testified that the noise issues have not just been continuing up to the date of the hearing but have been intensifying in volume and duration.
12. The Landlord's second witness, Enkelion Begaj (EB), was an employee of the Landlord. EB was the building manager of the rental unit for 5 years, however as of March 2023, is now the manager in another building in the Landlord's portfolio.
13. EB testified that he would regularly receive noise complaints about the Tenant. He also would observe that the Tenant would routinely slam her unit entrance door around 20-30 times per day.

14. EB testified that on January 17, 2023, the Tenant entered the Landlord's office to find out why her door latch and lock had not been replaced yet, because it was damaged. EB responded to the Tenant by informing her that she would be liable for the damage to the lock because it was her routine abuse of the door that caused the lock and latch to be damaged. The Tenant then proceeded to yell at all the employees in the office and then left the office, in the process, slamming the office door.
15. On January 18, 2023, EB and the Landlord received multiple emails from the Tenant. One email contained threats to use a pair of scissors on another tenant or on the Landlord's staff, unless the Landlord agreed to back off, and stop harassing her.
16. The emails were presented at the hearing and admitted as evidence.
17. EB testified that the police had been notified of the emails, however no arrests were made.
18. EB testified that due to the Tenant's actions and threats, the Landlord had cameras installed in the hallway as a safety precaution.
19. The Landlord's third witness, Virginia Adams (VA), testified on behalf of the Landlord. VA has been an Area Supervisor for the Landlord for the last 5 years. The rental complex in which the rental unit is located is in her region.
20. VA has testified that she has personally heard the noise issues that others have complained about on a regular basis.
21. VA testified that the cameras were installed in the rental complex in mid-February 2023.
22. VA has tried to address the noise issues with the Tenant on a number of occasions, each time, being treated in either dismissive or other times, a hostile manner.
23. Since the application was filed, VA testified that the Tenant has been charged with mischief after having been caught on video throwing stones at the Landlord's office door in the complex. This incident occurred in May 2023.
24. VA testified that the noise issues are still happening on a regular basis.
25. VA describes the Tenant as appearing to be in her mid 50s. VA stated that on occasion, the Tenant has been observed using a white cane, which would indicate some visual impairment. Other times, VA has observed the Tenant using a walker on occasion, which would suggest that the Tenant has some mobility issues.
26. VA stated that all of the emergency contacts that they have on record for the Tenant are no longer valid, including the ODSP worker who used to work directly with the Tenant. The Tenant refuses to give any other contacts to the Landlord, despite VA's attempt to get them.
27. VA stated that she has personally tried to get the Canadian Mental Health Association (CMHA) involved, however the CMHA told her that they would not get involved with this Tenant without a police or court order.

Analysis

28. Section 64(1) of the Act 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.

29. When determining if the 1st N5 served to the Tenant was valid, I find that the Tenant did substantially interfere with the Landlord and other tenants in the rental complex by repeatedly making excessive noises and acting in an aggressive manner towards staff of the Landlord and other tenants. I am also satisfied, based on the Landlord's own evidence that the 1st N5 was voided pursuant to section 64(3) of the Act.

30. Section 68 of the Act states:

68 (1) A landlord may give a tenant notice of termination of the tenancy if,

(a) a notice of termination was given to the tenant under section 62, 64 or 67; and

(b) more than seven days but less than six months after the notice mentioned in clause (a) was given to the tenant, an activity takes place, conduct occurs or a situation arises that constitutes grounds for a notice of termination under section 60, 61, 62, 64 or 67,

31. Based on the evidence before me, I am satisfied that the Tenant has substantially interfered with the reasonable enjoyment and the legal rights of both the Landlord and other tenants in the rental complex.

Daily Compensation

32. The Tenant was required to pay the Landlord \$9,458.92 in daily compensation for use and occupation of the rental unit for the period from November 25, 2022, to September 7, 2023.

33. Based on the Monthly rent, the daily compensation is \$32.96. This amount is calculated as follows: \$1,002.47 x 12, divided by 365 days.

34. There is no last month's rent deposit.

Section 83- Relief from Eviction

35. Section 83(2) of the Act states:

(2) If a hearing is held, the Board shall not grant the application unless it has reviewed the circumstances and considered whether or not it should exercise its powers under subsection (1).

36. Section 83(1) of the Act states:

83 (1) Upon an application for an order evicting a tenant, the Board may, despite any other provision of this Act or the tenancy agreement,

(a) refuse to grant the application unless satisfied, having regard to all the circumstances, that it would be unfair to refuse; or

(b) order that the enforcement of the eviction order be postponed for a period of time.

37. Although the Tenant was not present at the hearing, the Landlord's witness, VA, gave some insight regarding any issues that should be considered when determining if any relief should be granted.
38. Based on the evidence before me, I am satisfied that it would be unfair to refuse the Landlord's application to the Board.
39. However, in light of the evidence that the Tenant may have mobility and vision issues, I find that it would not be unfair to postpone the eviction date.
40. 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 November 10, 2023, pursuant to subsection 83(1)(b) 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 10, 2023.
2. If the unit is not vacated on or before November 10, 2023, then starting November 11, 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 11, 2023.
4. The Tenant shall pay to the Landlord \$9,458.92, less any rent that has already been paid to the Landlord since November 25, 2022. This represents compensation for the use of the unit from November 25, 2022, to September 7, 2023.
5. The Tenant shall also pay the Landlord compensation of \$32.96 per day for the use of the unit starting September 8, 2023, until the date the Tenant moves out of the unit.
6. The total amount the Tenant owes the Landlord is \$9,458.92.
7. If the Tenant does not pay the Landlord the full amount owing on or before November 10, 2023, the Tenant will start to owe interest. This will be simple interest calculated from November 11, 2023, at 7.00% annually on the balance outstanding.

October 17, 2023
Date Issued

Robert Brown
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 11, 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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