



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

Citation: Mathew v Mitchell, 2023 ONLTB 67860

Date: 2023-10-16

File Number: LTB-L-051401-22

In the matter of: 55 TARBART TERR
LONDON ON N6H3B1

Between: Saju Mathew Landlord

And

Chanel Mitchell Tenants
Derrick Hunter

2023 ONLTB 67860 (CanLII)

Saju Mathew (the 'Landlord') applied for an order to terminate the tenancy and evict Chanel Mitchell and Derrick Hunter (the 'Tenants') because:

- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully caused undue damage to the premises;
- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex used the rental unit or the residential complex in a manner that is inconsistent with use as a residential premises and that has caused or can be expected to cause significant damage.

The Landlord applied for an order requiring the Tenants 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 7, 2023.

Only the Landlord attended the hearing.

As of 11:03am, 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. The Tenant was in possession of the rental unit on the date the application was filed.
2. On August 24, 2022, the Landlord served the Tenants an N7 notice of termination. The notice of termination alleges that The Tenants are engaging in a dog breeding business of a large breed of dog. The Tenants, while running this business, have caused significant amounts of damage to the rental unit and rental complex.

3. The Tenants, in the course of running this business, have willfully damaged the rental unit, and are engaging in the use of the rental unit in a manner which is inconsistent with use as a residential premises, which has caused and can be expected to cause further damage.
4. The Landlord presented evidence that the Tenants are running a dog breeding company called "Forest City Presa". The Landlord submitted screenshots of the company's Facebook page. The Landlord pointed out that some of the pictures on the Facebook page show the rental unit, as well as some of the damage to the rental unit.
5. Some of the pictures on the Facebook page shows that there were at least six adult dogs residing in the rental unit.
6. The Landlord conducted an inspection of the rental unit on March 12, 2022. The Landlord witnessed at least 6 adult dogs as well as some puppies in cages in the rental unit.
7. During that inspection, the Landlord discovered that several of the walls were damaged in the unit. The damages included paint that had been removed by the Tenants or by the dogs scratching at the walls, trim/baseboards damage due to dogs scratching or gnawing at the wood, and significant damage to the walls in the kitchen. Several pictures showed several holes in the drywall throughout the unit.
8. The photos also showed damages to the floors as well as many of the wood fixtures in the rental unit.
9. The Landlord stated that during the inspection, the rental unit smelled of dog urine.
10. The Landlord submitted photos as evidence to support his testimony. The photos were taken by the Landlord during the inspection.
11. The Landlord testified that he has received an estimate from a contractor to repair the damage in the unit. The estimate is that it will cost \$24,000.00 to restore the rental unit to the state it was prior to the Tenants moving in.
12. At the hearing, the Landlord admitted that the contractor based this estimate only on pictures that he sent the contractor, and the estimate is not based on an in-person visit to the rental unit.
13. The Landlord stated that he would prefer a conditional order, allowing the Tenants to stay in the unit, but under these specific conditions:
 - a) Cease the dog breeding business out of their rental unit,
 - b) Only keep a maximum of three dogs in the rental unit, the other dogs to be removed from the rental unit,
 - c) Pay the Landlord \$24,000.00 in damages. This can be paid in installments of \$2,000.00/month of the first of every month until the Tenants have completely paid the balance of the damages,
 - d) Section 78 of the Residential Tenancies Act, 2006, would apply, which means if the Tenants breached the order, the Landlord, within 30 days of the breach, could file for the Tenants eviction without another hearing.

Analysis

14. Section 63(1) of the *Residential Tenancies Act, 2006* (the 'Act') states:

... a landlord may give a tenant notice of termination of the tenancy that provides a termination date not earlier than the 10th day after the notice is given if the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex,

(a) wilfully causes undue damage to the rental unit or the residential complex; or

(b) uses the rental unit or the residential complex in a manner that is inconsistent with use as residential premises and that causes or can reasonably be expected to cause damage that is significantly greater than the damage that is required in order to give a notice of termination under clause (a) or subsection 62 (1).

15. I find that notice was served in accordance with the Act. Furthermore, I find that the notice properly identified the parties, the termination date and the reasons for the notice of termination.
16. Based on the evidence before me, I am satisfied that the Tenants have willfully damaged the rental unit and by running a dog breeding business out of the rental unit, are using the rental unit in a manner that is inconsistent with use as a residential complex.
17. Pursuant to section 89(1)(a) of the Act, a Landlord may apply to the Board for an order for the Tenants to pay any reasonable out-of-pocket damages that the Landlord has or will incur.
18. Based on the uncontested evidence before me, I am satisfied that the Landlord's claim for \$24,000.00 in out-of-pocket expenses for damages to the rental unit is reasonable under the circumstances.
19. Pursuant to section 83(2) of the Act, the Board must consider all circumstances presented when considering whether to delay, deny an application outright, or deny an application pursuant to a conditional order. In this case, the Tenants were not present to make submissions, therefore I would have no reasons to delay or deny the Landlord's application. However, the Landlord has stated that he would prefer to give the Tenants a chance to continue the tenancy and has made his conditions clear.
20. 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.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.

2. On or before October 24, 2023, the Tenants shall cease using the rental unit to run their dog breeding business.
3. On or before October 31, 2023, the Tenants shall remove all but three dogs from the rental unit and shall be always limited to a maximum of three dogs in the rental unit.
4. The Tenants shall pay the Landlord \$24,000.00 which represents the reasonable costs of repairing the damage or replacing the damaged property to the rental unit. The Tenants shall pay the damages in the following manner:
 - a) \$2,000.00 on or before November 1, 2023,
 - b) \$2,000.00 on or before December 1, 2023,
 - c) \$2,000.00 on or before January 1, 2024,
 - d) \$2,000.00 on or before February 1, 2024,
 - e) \$2,000.00 on or before March 1, 2024,
 - f) \$2,000.00 on or before April 1, 2024,
 - g) \$2,000.00 on or before May 1, 2024,
 - h) \$2,000.00 on or before June 1, 2024,
 - i) \$2,000.00 on or before July 1, 2024,
 - j) \$2,000.00 on or before August 1, 2024,
 - k) \$2,000.00 on or before September 1, 2024, and
 - l) \$2,000.00 on or before October 1, 2024.
5. If the Tenants fail to comply with the conditions set out in paragraphs 2 to 4 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 Tenants. 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 Tenants.

October 16, 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.