



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

Citation: Brathwaite v Lariviere, 2023 ONLTB 52896

Date: 2023-09-21

File Number: LTB-L-079197-22

In the matter of: 321 Josephine Avenue
Windsor ON N9B2K9

Between: Jacqueline Brathwaite Landlord
Joan Brathwaite

And

Christina Lariviere Tenant
Brian Rivard

2023 ONLTB 52896 (CanLII)

Jacqueline Brathwaite and Joan Brathwaite (the 'Landlord') applied for an order to terminate the tenancy and evict Christina Lariviere, Richard Cabanaw and Brian Rivard (the 'Tenant') because:

- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex have substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlords or another tenant;
- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex have wilfully or negligently caused damage to the premises (N5 Notice);
- the Tenants, another occupant of the rental unit or a person the Tenants permitted in the residential complex have seriously impaired the safety of any person and the act or omission occurred in the residential complex;
- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the building has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlords in a building that has three or fewer residential units and the Landlords reside in the building (N7 Notice);
- the Landlords in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year (N12 Notice).

The Landlords also applied for an order requiring the Tenants to pay the Landlords' reasonable out-of-pocket costs the Landlords have incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex.

This application was heard by videoconference on May 29, 2023.

Only the Landlords and their support McKenzie Brathwaite attended the hearing. Jacqueline Brathwaite (JB) testified on behalf of the Landlords.

As of 9:46 a.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 Landlords' evidence.

Determinations:

Preliminary Issues:

Parties

1. The Landlords' L2 application dated January 1, 2023 is based on an N5 Notice dated December 19, 2022, an N7 Notice dated December 1, 2022, and an N12 Notice dated December 1, 2022. Bryan Rivard, Christina Lariviere, and Richard Cabinaw are listed as Tenants. The Notices all state "already moved" next to Richard Cabinaw's name. The Landlords confirmed that he moved out of the rental unit in November 2022 prior to the application being filed. The application is amended to remove Richard Cabinaw as a party.
2. The Tenant Brian Rivard (BR) moved out of the rental unit in April 2023 but was in possession of the rental unit at the time that the application was filed. BR is not the subject of the allegations in the N7 Notice. As discussed below, the Landlords agree that BR did not commit the conduct described on the N5 Notice.
3. Christina Lariviere continues to be in possession of the rental unit.

N12 Notice

4. The Landlords are no longer proceeding with the N12 notice as they were advised by the Board prior to the hearing that the N12 Notice contained errors.

The Application:

5. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy and part of the claim for compensation in the application. Therefore, the tenancy between the Landlords and the Tenants is terminated effective October 2, 2023. The Tenants must move out of the rental unit on or before October 2, 2023.

N7 Notice of Termination

6. On December 7, 2022, the Landlords gave the Tenants an N7 notice of termination. The notice of termination contains the following allegations:
 - on November 2, 2022 the Tenant Richard Cabanaw (RC) notified the Landlords that he was ending his tenancy and that "he was physically abused and verbally threatened. Police notified"; and
 - December 1, 2022 the lock was changed, the Landlords were not provided a key, and "threats were made against me. Police case opened."

7. The N7 Notice alleges that these actions constituted serious impairment of safety and substantial interference with the Landlords' enjoyment of the building.

Substantial Interference

8. This portion of the N7 was served pursuant to subsection 65(1) of the *Residential Tenancies Act, 2006* ("Act") which states, in part:

(1) a landlord who resides in a building containing not more than three residential units may give a tenant of a rental unit in the building notice of termination of the tenancy ... if the conduct of the tenant, another occupant of the rental unit or a person permitted in the building by the tenant is such that it substantially interferes with the reasonable enjoyment of the building for all usual purposes by the landlord or substantially interferes with another lawful right, privilege or interest of the

11. JB, one of the two Landlords, testified that the Landlords do not live in the building. Therefore, section 65 does not apply to this tenancy, and I cannot consider whether the alleged conduct contained in the N7 notice conduct that substantially interferes with the reasonable enjoyment of the building for all usual purposes by the landlord.

Serious Impairment of Safety

12. This portion of the N7 was served pursuant to subsection 66(1) of the Act:

A landlord may give a tenant notice of termination of the tenancy if,

(a) an act or omission of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant seriously impairs or has seriously impaired the safety of any person; and

(b) the act or omission occurs in the residential complex.

13. The N7 notice does not provide any details about the assault or threat against RC. JB testified that Tenant RC was assaulted by the Tenant CL and that as a result he moved out of the rental unit with his two children. There was no evidence that JB witnessed this assault, but it is likely that she was informed of the assault by RC. RC was not present at the hearing to provide testimony, and as discussed above he was not a Tenant at the time that the application was filed or when the notice was given. I have insufficient evidence to find that the alleged assault occurred, occurred in the residential complex, or that it constitutes a serious impairment of safety. While JB's hearsay evidence about the assault is admissible, this evidence alone is insufficient to for the Landlords to meet their burden of proof on the balance of probabilities.
14. The N7 notice also alleges that the locks were changed (also part of the allegations on the N5 Notice) and "threats were made" to Landlord JB on December 1, 2022, which led to a police report. The threats were not part of the allegations on the N5 notice. No further details are provided on the N7 notice about the threats.

15. JB testified that CL sent a text on December 1, 2022 to the Landlords which was submitted into evidence telling them that she had changed the locks. Changing the locks without providing the landlord with a key is a breach of section 35 of the Act but I do not find that it constitutes a serious impairment of safety.
16. The N7 notice claims that CL was “threatening to the Landlords.” There were no further details on the N7 notice.
17. Under section 43 (2) of the Act, a notice of termination “shall also set out the reasons and details respecting the termination....”
18. JB testified that CL was threatening to the Landlords, and she submitted undated screen shots of texts which use vulgar language and slurs, one of which states “I’m coming for you and so are my boys” and CL states that she knows the Landlord’s address. JB testified that a police report was filed, but she was unsure of the date. While this information was provided through testimony at the hearing, there were no details at all provided on the N7 notice about these threats, and therefore cannot be considered in this proceeding.
19. JB submitted disturbing texts and testified about an incident which occurred in March when she was inside the house changing the internet router and CL kicked her. While this may suggest that there is more of a safety issue now, it does not help me to understand whether there was an actual or real risk in December when the Notice was served. These allegations are from an incident that occurred after the N7 Notice was served and therefore I cannot consider them.
20. The Landlord has not proven that the Tenant or another occupant of the rental unit or a person permitted in the residential complex by the Tenant has seriously impaired the safety of the Landlords by changing the locks or by threatening the Landlords by text.

N5 Notice of Termination

21. On December 10, 2022, the Landlords gave the Tenants an N5 notice of termination. The notice of termination contains the following allegations:
 - the Tenants substantially interfered with the Landlords’ reasonable enjoyment of the residential complex and/or lawful rights, privileges, or interests; and
 - the Tenants wilfully or negligently damaged the rental unit or rental complex
22. The Notice alleges that:
 - on December 1, 2022 the Landlords were “notified via email that that the locks have been changed;”
 - on December 7, 2022 when JB entered the rental unit, the Tenant CL was smoking in the home contrary to the rental agreement;
 - also on December 7, 2022 JB noticed that the lines to the security cameras had been cut

Locks

23. JB testified that the Landlords cannot enter the rental complex because CL changed the front door lock and put locks on the gates and did not provide keys to the Landlords.

24. Subsection 35(1) of the Act states:

A tenant shall not alter the locking system on a door giving entry to a rental unit or residential complex or cause the locking system to be altered during the tenant's occupancy of the rental unit without the consent of the landlord.

25. The Landlords submitted into evidence a copy of a text dated December 1, 2022 from CL stating "...and you can no longer get in the house I had the locks changed [sic]." A text from Wednesday January 4, 2023 states:

Now are you are [sic] definitely overstepping your boundaries did you realize that you setting foot on my property since you in a bad place with the court you are not allowed on the property even though you own the fucking place we rent it...[sic]

26. A further text states "... you're not getting keys to this house entering this property or anything until the landlord intended board [sic]."

27. I am satisfied that the Tenants did not provide the keys to the Landlord after receiving the N5 notice of termination. Therefore, the Tenant did not void this portion of the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006 (Act)*.

28. I find that this conduct has substantially interfered with a lawful right, privilege, or interest of the Landlords because they cannot access the property that they own. The Act provides that the Landlords have a right to the keys and may also enter the rental unit without notice in the event of an emergency. The Tenants' communication makes it clear the Tenants deliberately changed the locks and does not intend to provide the Landlords with keys.

Smoking

29. JB stated that when the Landlords were at the house on December 7, 2022, CL was smoking in the home which is contrary to the provisions of the rental agreement. JB testified that this means that the entire house will need to be painted when CL vacates the rental unit and estimates that this will cost \$1,300.00. No supporting documentation was provided.

30. The lease states that there will be no smoking in the rental unit.

31. No further evidence was led that the Tenant had been smoking in the house on any occasion other than December 7, 2022. The Landlord's assertion that the entire house will have to be repainted due only to the Tenant smoking is not supported by any evidence.

32. No further evidence was led about the Tenant smoking in the rental unit during the seven day period following the service of the N5 notice. Therefore, I must conclude that the Tenants voided this portion of the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006 (Act)*.

Security camera wires

33. The N5 Notice states that on December 7, 2022, the Landlords “noticed that the lines to the video cameras have been cut.” JB testified that there were video cameras at the front and back of the property for security purposes. The front camera pointed at the street.
34. She testified that CL cut the wires to the camera and told her that it was because she thought the Landlords were recording the conversations she had on the balcony. JB stated that the cameras were video-only, and that CL had never raised any concerns about the cameras prior to cutting the wires.
35. JB testified that an Amazon search estimated the cost to replace and install the camera was \$500.00. No supporting documentation was provided.
36. I find that CL’s conduct in cutting the security camera wires substantially interferes with a lawful right, privilege, or interest of the Landlords. It is reasonable that the Landlords have safety measures for the property, and the uncontradicted testimony of the Landlords is that the cameras did not point at the house or record audio. The cameras would not negatively impact the privacy of the Tenants.
37. The Tenants did not repair the wires after receiving the N5 notice of termination. Therefore, the Tenants did not void this portion of the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).

Damages

38. The Landlords testified that the locks on both the front and back door and on the gates were changed and need to be replaced. They estimate that it will cost approximately \$500.00 to do so. No evidence was submitted to support this estimate.
39. The Landlords stated that they have also filed an L8 application addressing this issue and can seek costs as part of that proceeding for the lock replacement in accordance with section 35(3) of the Act.
40. With respect to the alleged damage caused by smoking, the Landlords have not proven that there is actual damage to the rental unit due to CL smoking in the unit, or provided any evidence of the reasonable costs that the Landlords have incurred or will incur as a result of the damage. It is not unusual that a rental unit would be repainted before new tenants move into the unit as a normal cost of doing business.
41. The Landlords testified that the security camera needs to be replaced and estimated that the cost would be \$500.00. I find that the Landlords will likely incur reasonable costs of \$500.00 to replace the damaged security camera.

Relief from eviction

42. Having found that the conduct of the Tenants substantially interfered with a lawful right, privilege, or interest of the Landlords by changing the locks and vandalizing the security cameras by cutting the wires, I must consider if relief from eviction should be granted pursuant to subsection 83(1) of the Act.

43. As discussed above in paragraphs 25 and 26, the Tenant CL sent texts to the Landlords on January 4, 2023 after the Notices were served regarding the keys which are overtly hostile in tone.
44. As mentioned above in paragraph 18, CL threatens the Landlords by text. While the texts are undated, JB testified that this occurred after the notice was served. These texts are evidence of a pattern of ongoing problems since the notice was served. This conduct suggests that it is likely that the Tenants will engage in further conduct that would substantially interfere with a lawful right, privilege, or interest of the Landlords.
45. Taking the above into account, 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.
46. The Landlords collected a rent deposit of \$1,950.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit in the amount of \$27.72 is owing to the Tenants for the period from September 1, 2022 to May 29, 2023.
47. 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.

It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated effective October 2, 2023. The Tenants must move out of the rental unit on or before October 2, 2023.
2. The Tenants shall pay to the Landlords \$500.00, which represents the reasonable costs of replacing the damaged property.
3. The Landlords owe \$1,977.22 which is the amount of the rent deposit (\$1,950.00) and interest on the rent deposit (\$27.72), from which the amount owing by the Tenant (\$500.00) is deducted.
4. The amount of the rent deposit and interest the Landlords owe on the rent deposit exceeds the compensation for damage awarded to the Landlords by \$1,477.72.
5. If the Landlords do not pay the Tenants the full amount owing on or before October 2, 2023, the Landlords will start to owe interest. This will be simple interest calculated from October 3, 2023 at 6.00% annually on the balance outstanding.
6. If the unit is not vacated on or before October 2, 2023, then starting October 3, 2023, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

7. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or after October 3, 2023.

September 21, 2023

Date Issued

Margo den Haan

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 3, 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