



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

Citation: London & Middlesex Community Housing Inc. v Ross, 2023 ONLTB 63447

Date: 2023-09-19

File Number: LTB-L-047103-22

In the matter of: 806, 241 SIMCOE ST
LONDON ON N6B3L4

Between: London & Middlesex Community Housing Inc. Landlord

And

David Ross Tenant

London & Middlesex Community Housing Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict David Ross (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 12, 2023.

The Landlord's agent, Deven Richardson and the Tenant attended the hearing. The Landlord was represented by Jennifer Smith. The Tenant was assisted by his friend, Derek Balfour.

Also in attendance was the Landlord's witness, Doug Nemeth.

Determinations:

PRELIMINARY ISSUE

1. At the beginning of the hearing, the Tenant stated that he was illiterate – that he could not read or write and did not know what the notices contained and the reason for the application before the Board. The Tenant also indicated that while he received disclosure from the Landlord, he did not review the video footage or ask the Landlord to play it for him, prior to the hearing, and the paper-copy of the evidence was not with him at the time of the hearing.
2. I asked the Tenant what efforts he made between the last hearing and this one, to get help, understand to notices, seek advice. He testified that he had made no efforts.

3. The Landlord confirmed that the Landlord read the notices to the Tenant when they were served and reviewed its contents; when they provided the disclosure, the Landlord confirmed both parties reviewed all the material prior to the hearing, except for the videos.
4. The Tenant's evidence then changed to confirm he understood the issues that were before the Board and that he was "working off his memory." The Tenant further confirmed that he was ready to proceed.
5. I proceeded to hear the merits of the Landlord's application. The evidence that was presented during the hearing by the Landlord was described in detail to accommodate the Tenant for not bringing it with him.

L2 APPLICATION

6. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. However, given the significant improvement of the state of the unit as late as August 30, 2023, an order shall issue preserving the tenancy and imposing conditions on the Tenant, for the duration of the tenancy.
7. The Tenant was in possession of the rental unit on the date the application was filed and continued to be in possession of the rental unit as of the hearing date.
8. By way of background, this is a monthly tenancy in which rent is due on the first of the month in the amount of \$139.00. The Tenant resides in a rent-geared-to-income unit.
9. The residential complex is a 12-storey hi-rise building which consists of one-bedroom units.
10. This tenancy began in November 2021; the Tenant is the sole occupant of the rental unit.

Substantial interference

11. On June 8, 2022, the Landlord gave the Tenant a first, voidable N5 notice of termination with a termination date of July 1, 2022 pursuant to subsection 64(1) of the Act. This notice was based on an incident of noise and throwing items into the hallway on June 6, 2022. Therefore, the Landlord was allowed to give the Tenant a second, non-voidable N5 notice of termination under section 68 of the *Residential Tenancies Act, 2006* (Act).
12. On August 17, 2022, the Landlord gave the Tenant a second N5 notice of termination with a termination date of September 9, 2022 pursuant to subsection 68(1) of the Act. The notice of termination was based on the discovery of a large amount of clutter and combustibles in the rental unit following an inspection that took place on July 6, 2022.
13. At the hearing, the Landlord's witness, DR, who is the tenants' services manager for the past three years, testified that on June 6, 2022, a video was flagged by security and reported to him, based on complaints received by the Tenant's neighbours of yelling and screaming from the rental unit and the throwing of objects into the hallway.
14. The Landlord submits that during this incident, the Tenant had also permitted a former tenant, BL, into his unit, despite knowing that a trespass notice was issued against her.

15. A copy of the video footage was also submitted into evidence in support which shows someone from the unit throwing items such as a pink backpack, a black bag, a folder with documents, out into the hallway. The Tenant then exits his unit, waves at the camera. A little while later, BL exits the Tenant's unit and security arrives shortly after, to escort her down the hallway and out of the building.
16. DR testified that on July 6, 2022, he attended the rental unit and found BL there; he also testified that he took photos of this inspection, which were also submitted to the Board. These photos show an excessive amount of clutter throughout the unit. In the bathroom, the sink is full of items such as a basketball and other small items; the bathtub is filled with a bucket, and sheets. The bathroom floor has other items sprawled across the floors; the doors to the unit and the bedroom have additional keycode locks and are therefore inaccessible by the Landlord. The living room has a fixture on the ceiling, several combustibles piled high up in the unit and limited egress to the balcony. The kitchen has items piled on the table; the balcony has many combustibles piled high and the door of the balcony cannot be opened or closed properly. The hall closet has tools piled up high and the speaker in the unit has been covered with tape. The Tenant was advised to clear his unit for a follow up inspection.
17. DR testified on March 29, 2023, a follow-up inspection took place in the unit; photographs were presented of this inspection that were taken by him. DR testified that the Fire Prevention officer accompanied him during this inspection. The photographs from this inspection show more items have been brought into the rental unit and are cluttered, although the clutter is organized in some areas of the rental unit. There were still a high amount of combustibles in the rental unit.
18. DR testified that an order was issued by the London Fire Department because of this inspection which required the Tenant to comply with its terms by May 1, 2023. The Tenant was to comply with the following terms:

Appendix B / Annexe B

It is ordered that/Il est ordonné ce qui suit:

The excessive amount of combustibles within Unit 806 would prohibit a safe and timely egress in the event of a fire. The excessive amount of combustibles located on the interior of the unit would contribute to rapidly spreading fire throughout the unit and to neighboring units. The conditions of the unit will put responding emergency personnel and the occupancy and other residents at undue risk, further to this, the amount of combustibles will also make fire suppression activities more difficult as the fuel load will make the application of a firefighting agent ineffective

1. The combustible material located in the unit shall be kept to maximum of 750mm (2.5 feet) in height in all areas of the unit.
2. Aisles to and from each room shall be provided to allow for egress in the event of a fire or emergency. The aisles shall be a minimum of 450mm (18 inches) from all ignition sources.

19. DR testified that a follow-up inspection took place on May 10, 2023; photographs of this inspection were submitted into evidence that show the smoke detector had been disconnected from its console; there was no overall change to the rental unit in terms of the number of combustibles in the rental unit or the amount of space for egress in each of the rooms – however, the balcony had less items than before. As of this date, the Tenant had still not complied with the Fire order that had been issued.
20. Another inspection took place on August 9, 2023 which showed the bedroom of the unit to be in the worst state since the first inspection. There was still a large amount of combustibles in the rental unit. DR testified that as of this date, the Tenant was still not in compliance with the Fire order.
21. DR testified that an inspection was scheduled for August 18, 2023, however, the Tenant refused entry to the rental unit.

22. DR testified that another inspection took place on August 30, 2023 where the condition of the rental unit was better than the previous inspections, but still not in compliance with the Fire order.
23. The Landlord seeks a termination of the tenancy given that they have tried to work with the Tenant but that the Tenant has left the Landlord in an adverse position with the Fire Department and other tenants of the residential complex.

Tenant's Response

24. The Tenant testified that BL is his fiancée and is entitled to visit him at the rental unit; he testified that she is a good woman who is working on becoming a better version of herself.
25. The Tenant testified that he had addressed the Landlord's concerns by renting a storage unit and paying \$250.00 each month to remove the clutter from his unit and comply with the Fire Order.
26. The Tenant testified that he recognizes he is a hoarder and is working on removing more items from his unit. He also testified that during the last visit from the Inspector, the Inspector was happy with the way his unit looked.
27. The Tenant seeks to preserve his tenancy and is agreeable to a conditional order to keep his unit in a clutter-free state.
28. The Tenant testified that prior to moving into the rental unit, he used to live on the streets and cannot afford to live anywhere else. However, in the alternative, he seeks a delay in eviction to October 15, 2023 to make secure living arrangements.

ANALYSIS

29. Based on the uncontested evidence before the Board, I am satisfied that the Tenant's conduct of storing an excessive number of combustibles at the rental unit substantially interferes with the Landlord's lawful rights, interests and privileges and the reasonable enjoyment of the premises by others. I say this as a fire order was issued against the rental unit, due to the clutter, putting the Landlord in an adverse position.
30. However, I find from the inspection on August 30, 2023, that the Tenant has significantly improved the condition of the unit and is able to continue doing so going forward. I say this based on the evidence before the Board including the photographs and the Tenant's testimony. Therefore, I find it appropriate to grant the Tenant relief from eviction.
31. While the Landlord still has concerns with respect to the Tenant's balcony area, the stacked items in the living room and bedroom, as well as the window and baseboard areas, I find that the circumstances warrant a conditional order.
32. Conditional relief is appropriate where tenants acknowledge the behaviour and are willing to take steps to change that behaviour to prevent same problems from re-occurring in the future. The evidence here supports that conclusion with this Tenant.
33. 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.

34. With respect to the issue of the Tenant permitting BL into his unit, the Tenant, as an occupier of the rental unit, is permitted to have guests including BL, on the property as long as he invites them to stay. I find that the landlord has the right under the Trespass to Property Act to prohibit a person from entering a rental complex but only if the person is not an invitee of the tenant.
35. In *Cunningham v. Whitby Christina Non-Profit Housing Corp* O.J. No. 1533 [1997] the Ontario Court (General Division), the Court further reiterates the above and finds that the Landlord does not have the right to prohibit a person from entering the rental unit if the person is an invitee of the Tenant.
36. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

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 15, 2023, the Tenant shall:
 - a) Clear pathways to all exits with a minimum clearance of 18 inches;
 - b) Ensure the living room, bedroom and kitchen are clear of obstructions and excessive clutter;
 - c) Remove any stacked items that are in excess of 2.5 metres in height;
 - d) Clear areas around all exits and entranceways to the unit to ensure all unit doors can be opened all the way; and
 - e) Remove all combustible items near the window and around the baseboards at the rental unit, within a minimum distance of 18 inches;
3. For the duration of this tenancy, the Tenant shall:
 - a) Remove all combustible items near the window and around the baseboards at the rental unit, at a distance of 18 inches;
 - b) Ensure pathways are kept clear at all exits (with a minimum clearance of **18 inches**);
 - c) Ensure any furniture in the rental unit is clear of obstructions and excessive clutter;
 - d) Maintain egress pathways clear of any obstructions from the floor to the ceiling to provide a safe means of egress for emergency responders;
 - e) Ensure stacked items are stacked securely and are not stacked higher than approximately **2.5 feet** from the floor to the ceiling;
 - f) Ensure all exits and entranceways to the unit must be clear and accessible – e.g. all unit, room and balcony doors open all the way;
 - g) Keep all rooms in a reasonable state of cleanliness; and
 - h) Ensure the bathroom is clear of obstructions around and on top of the sink, and around and inside the bathtub/shower.

4. The Tenant shall also refrain from the following conduct:
 - a) Refusing or impeding access to the rental unit for the Landlord to inspect, provided that proper notice has been given in accordance with the Act; and
 - b) Covering the speaker and/or tampering with life safety devices in the rental unit, including the smoke detector.
5. **If the Tenant fails to comply with the conditions set out in paragraphs 2-4 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 Tenant. 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 Tenant.**
6. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
7. If the Tenant does not pay the Landlord the full amount owing on or before September 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 1, 2023 at 6.00% annually on the balance outstanding.

September 19, 2023
Date Issued

Sonia Anwar-Ali
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.