



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

Citation: Sherrill Stafford v Jennifer Taylor, 2023 ONLTB 36475

Date: 2023-09-15

File Number: LTB-L-073090-22

In the matter of: Apartment 1, 104 CAMERON ST E Cannington
ON L0E1E0

Between: Sherrill Stafford Landlord

And

Jennifer Taylor Tenant

Sherrill Stafford (the 'Landlord') applied for an order to terminate the tenancy and evict Jennifer Taylor (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; (N5 Notice)
- the Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex. (N7 Notice)

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 May 2, 2023 and concluded on July 14, 2023.

On May 2, 2022, the Landlord, the Landlord's Representative, Kimberley Covey and the Tenant attended the hearing. The Tenant spoke to TDC before the hearing and had also consulted with legal aid beforehand. Julie Diamond (LW#1) and Shannon McGragh (LW#2), attended as witnesses for the Landlord.

On July 13, 2023, the Landlord, the Landlord's Representative, Kimberley Covey and the Tenant attended the hearing. Sarah Jones (LW#3), Kate Dukelow (LW#4) attended as witnesses for the Landlord. Christine Sherlock (TW#1) and Cst Bryson (TW#2) attended as witnesses for the Tenant.

Preliminary Issue:

Disclosure:

1. The Tenant's request to disallow the Landlord's disclosure submission and/or dismiss the Landlord's application because she was unable to open the Landlord's evidence on the Board's TOP portal. The request was denied because the tenant confirmed she received another copy the Landlord's submissions by email. The Landlord's Representative also requested to disallow the Tenant's evidence because it was given to the Landlord two days before the hearing and not 5 days in accordance with the Board's Rules. The Landlord's Representative indicated she was able to review the Tenant's disclosure in one day and therefore I was not prepared to declare the evidence as inadmissible. The hearing had to be adjourned on May 2, 2023 because there was insufficient time to complete the application.
2. On July 14, 2023 at around 11:05 am. to 11:25 a.m. the Tenant was given time to speak to her support workers and was given a break. When the hearing convened, the Tenant's witnesses were heard and the Tenant adequately completed her defence.

Determinations:

3. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. However, based on the Board discretion to grant relief under section 83 of the Act, the tenancy is preserved if the Tenant complies with the conditions set out in my order below.
4. N5 Notice of Termination

On October 27, 2022, the Landlord gave the Tenant an N5 Notice of Termination terminating the tenancy on November 25, 2022. The notice of termination contains the following allegations: the Tenant has 50 birds flying freely in the rental unit and odor/stench from the birds and feces emanates throughout the complex which is the cause of complaints made by other tenants; there are feathers accumulation and damage being caused to the walls and floors by feces and damage to the windows screens; on January 22, 2022 the means of egress in the shared common hallway was obstructed by the Tenant's property which is a violation of fire code; the Tenant denied the Landlord access to the unit on January 22, 2022 when lawful notice was given; on December 17, 2021 the Tenant installed 20 amp fuses in 15 app sockets, replaced light fixture(s) and grounded electrical wires; The Tenant utilizes a dehumidifier and purifier on high blowing the breakers which increases hydro costs; The Landlord incurred costs to service the furnace electrical and dehumidifier because of feathers and droppings that have caused blockages.

5. Subsection 64(1) of the *Residential Tenancies Act, 2006* (the 'Act') states, "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. Subsection 64(3) of the Act states, “The notice of termination under subsection (2) is void if the tenant, within seven days after receiving the notice, stops the conduct or activity or corrects the omission.” In this case, the seven-day voiding period is from October 28, 2022 to November 3, 2022.
7. The Tenant did not stop the conduct or activity or correct the omission within seven days after receiving the N5 notice of termination . Therefore, the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).

N7 Notice of Termination:

8. The N7 Notice is based on the same reasons as the N5 Notice of Termination and is not a voidable notice.

Means of Egress in hallway:

9. The Tenant occupies the basement and there's a hallway that leads to her unit which is part of the common area. The Landlord received a notice from the Fire Chief on January 4, 2023 that property stored in the common area hallway is in violation of the fire code. The Tenant did not void the N5 Notice and although there was some improvement the Tenant continues to store a shelf and jackets hanging on the wall in the common area.
10. The Tenant did not void the N5 Notice because she doesn't dispute that she had property in the hallways after the N5 Notice was issued on October 27, 2022 to date.
11. The Tenant followed up with the fire inspector, LW#4, who confirmed at the hearing for the first time that to comply with fire safety, the Tenant must remove the furniture, jackets, and all items from the shared hallway in the common area. Since the Tenant received clarifying information only at the hearing, the Tenant commits to remove her property in the common area to preserve this tenancy.

Damage:

12. The issue with respect to alleged damage to windows screen, walls, floors, and furnace is not properly before me. The Landlord has not applied for an order under section 89 of the Act nor is the application for termination under section 62 of the Act based on allegations that the Tenant wilfully and/or negligently caused undue damage to the Landlord's property. Even if it was, the Landlord provided no evidence of any physical damage caused to the rental unit except for the windows screen which I am satisfied was damage caused by squirrels not the Tenant's birds. This portion of the application is dismissed.

Birds:

13. The Landlord has placed air fresheners at all levels to mitigate the odor from excessive bird presence which started in 2015 which according to the Landlord has progressively gotten worse. The Landlord testified she was last in the rental unit in November 2018 where she estimates she witnessed 100 birds flying freely in the rental unit. She also estimates there were approximately 30 bird cages and estimates the Tenant has presently approximately 50 to 60 birds in the rental unit. The Landlord referred to a letter from her plumber dated January 18, 2021, that references having seen birds flying everywhere in the unit on October 16, 2019 and seeing bird droppings on the wall and carpets.
14. LW#1, a tenant in the complex describes the odor like an 'animal shelter' or 'kennel' that comes through the vents into her unit. The smell is described by LW#2, who's lives just above the Tenant' unit, as that of petting zoo', and 'horrible' and she also confirmed the odor emanates through the vents; LW#3, a by-law enforcement supervisor in animal service department with 30 years experience, described the odor as 'heavy like wet hamster shavings with mild urine smell' and 'unescapable'.
15. TW#2, a former tenant of the residential complex, testified that she was in the Tenant's unit in June 2022 who she describes the odor as smelling 'like birds" and not "overpowering. The Tenant further showed a video of a technician standing outside her door confirming that he did not smell anything.
16. The Tenant confirmed she has 31 birds not 50 birds in her unit which are contained in two rooms within her unit. She did not challenge the LW#1's testimony that the Tenant has a Facebook page called "Tay Tiki Bird Rescue and Sanctuary". The Tenant agrees she allows her birds to fly freely from 9:00 a.m. to 5:00 p.m. daily.

Findings:

17. I find the Tenant's conduct continued within the seven-day voiding period because the odor was ongoing by virtue of housing 31 birds that defecated in the two room in the rental unit for 8 hours each day. The Landlord and two witnesses attested to the animal odor that emanates into the hallway and/or into their units. I acknowledge the Tenant mitigates by cleaning the rooms daily, covering the floor with a tarp, running appliances including humidifier and air purifier(s) and keeping the windows opened, however, her efforts, on a balance of probabilities, does not effectively or sufficiently rectify the problem. Odor is subjective. There were multiple witnesses to attest to the odor, which is enough to support a finding the odor was an irritation and nuisance for others which substantially interfered with other tenants' enjoyment of their unit.
18. TW#2 testimony was considered, however, she doesn't live in the complex. The video that captures the gas technician's comments only captures a brief point in time on March 20, 2023 during a brief visit. The Tenant makes a distinction between a scent and odor, but she admits she's "nose blind". By virtue of the numbers of birds present that fly freely, they also defecate freely on the floor/walls, and I find this is reasonable cause to explain

and corroborate the odor complaints from the Landlord and the other tenants living in the complex.

19. Both LW#1 and LW#2 testified they stopped having guests in the unit because of embarrassment caused by the persistent odor which is heightened in hotter summer temperatures. The Tenant also admits the odor is amplified when the feces is disturbed at the time of cleaning. This is not a situation where the birds come and go but a concentration of the high numbers of birds that are permanently held in two rooms. The complex also has a shared air exchange and it's not unreasonable that there is a real concern about the air quality in the complex. There's no dispute the odor is amplified when the furnace/heat is turned on or in the summer when the fans circulate the air exchange. Other tenants are worried about the air quality for their health and there's a real potential of their wellbeing to be compromised which satisfies me that there was reasonable cause for the Landlord to issue the Tenant an N7 Notice of Termination because her conduct impairs or has the real potential to impair the safety of other tenants in the complex.

Entry:

20. The Landlord gave the Tenant a notice of entry on January 22, 2022, for inspection on January 24, 2022. The Landlord also testified she provided a notice on January 15, 2022 informing the Tenant she would be in the unit on January 17 2022. The Tenant sent a letter in response dated January 16 and January 23, 2022, denying her access because the Tenant did not have a mediator/support person available to join her. The Tenant never got back to the Landlord about availability. The Tenant does not dispute that the Landlord was refused entry on January 24, 2022. There was no evidence led that the Landlord gave the Tenant a notice of entry during the seven-day voiding period from October 28, 2022 to November 2022. Therefore, this portion of the application is dismissed.

S. 83 consideration:

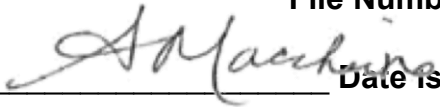
21. The Act is remedial legislation and the courts have determined that evicting a tenant is a remedy of last resort. In the cases of *Sutherland v. Lamontagne*, [2008] O.J. No. 5763 (Div. Ct.) and *Paderewski Society v. Ficyk*, [1998], the Divisional Court stated, "to put somebody out of their home must, in my view, call for clear and compelling circumstances that it's no longer possible for the arrangement to continue."
22. 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 condition(s) set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act because the Tenant should be given a chance to foster or relocate her pets elsewhere to preserve this tenancy.
23. The Tenant testified she will remove her property from the common area to preserve the tenancy.

24. The Tenant's birds are her pets, and I note she was adamant that they are not up for adoption. However, the Tenant may be motivated to find alternate housing for her birds knowing her housing is at risk. I recognize the Tenant's life is centered around caring for her birds and she compares her responsibility no different from a parent caring for their children, but the alternative is to terminate this tenancy where she will be forced to relocate her birds anyway and likely find herself homeless because of her low income and high market rent. I make this conclusion based on the Tenant's testimony that she has been looking for alternate housing for herself and her birds for the past four years without success.
25. I find it's reasonable to allow the Tenant to keep a few of her birds because to remove them entirely, given the Tenant's strong responsibilities and attachment, will likely have a negatively impact on the Tenant's wellness, who is already a person with disability. To decrease the number of birds in the unit to five is reasonable, because it will permit the Tenant to keep a few birds and also reduce the amount of bird feces causing the odor that interferes with other tenants' enjoyment of the rental unit. The Tenant will be given two months to find alternate housing for her birds.
26. The Tenant has asked for accommodation and the Landlord has a duty to accommodate the Tenant's disability, therefore it's reasonable for the Landlord to give written notice before entering the unit at least 5 days before inspection so that the Tenant has time to arrange for a support person to be present with her. The Tenant has supports in place as was evident by the people that accompanied her at the hearing.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is preserved if the Tenant meets the following conditions:
2. On or before September 26, 2023, the Tenant shall remove all property located in the hallway of the common area(s) including, but not limited to, her shelf and jackets and shall always maintain the means of egress clear to comply with fire safety code requirements.
3. On or before November 30, 2023, the Tenant shall reduce and maintain the number of cages and birds in the unit down to five (one bird per cage).
4. The Landlord may issue a notice of entry to inspect the unit regularly for compliance provided the Landlord gives at least 5 days written notice to allow the Tenant time to make arranges for a support person to be with her, as a means of accommodating the Tenant's disability.
5. For a period of twelve months starting December 1, 2023 to November 30, 2024, if the Tenant fails to comply with paragraphs 2 and 3 of this order and the Landlord receives a written complaint from other tenants with sufficient details of odor reaching the level of substantial, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006*, without notice to the Tenant for an order terminating the tenancy and evicting the Tenant. The Landlord must make this application no later than 30 days after receiving the complaint.

September 15, 2023


Date issued

Sandra Macchione

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.