



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

**Citation:** Quickdart Investments Limited v Daniels, 2023 ONLTB 61759

**Date:** 2023-09-12

**File Number:** LTB-L-035574-22

**In the matter of:** 606, 2199 WALKER AVE  
PETERBOROUGH ON K9L1T8

**Between:** Quickdart Investments Limited Landlord

**And**

Bev Daniels Tenants  
Melissa Daniels  
Keith Seaborn

2023 ONLTB 61759 (CanLII)

Quickdart Investments Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Bev Daniels, Melissa Daniels and Keith Seaborn (the 'Tenant') because:

- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant.

This application was heard by videoconference on June 28, 2023.

The Landlord was represented by David Ciobataru. The Tenants were represented at the hearing by Prabjoht Singh.

**Determinations:**

*Preliminary Issue*

1. The same parties are before the Board regarding application LTB-L-0245586-22. Order LTB-L-024586-22 referred to the Tenants' smoking in rental unit. However, that issue was not before the Board, nor was that part of the grounds for termination in application LTB-L-0245586-22. Further order LTB-L-0245586-22 was set aside by way of an interim review order issued on July 5, 2023.
2. Since the issue of smoking in the rental unit has not been disposed of, I will address that issue as part of his order.

*L2 Application*

3. The Landlord, on a balance of probabilities the grounds for termination. However as explained below the tenancy continues, subject to the Tenants meeting the conditions set out below.

*N5 Notice of Termination*

4. On May 9, 2022, the Landlord gave the Tenant an N5 notice of termination. The notice of termination contains the following allegations:
  - On April 17, 2022, one of the Tenants' occupants was seen on video surveillance vandalizing other cars.
  - The Tenants continue to smoke in the rental unit contrary to the terms of the tenancy agreement.

*Vandalism*

5. The Tenants Bev Daniels and Melissa Daniels are mother and daughter. The alleged act of vandalism was committed by the son of MD. The Tenants acknowledged the act of vandalism was committed.
6. The son of MD has an intellectual disability. He is going through difficult circumstances but is getting help. Given the circumstances, I find a conditional order is appropriate.

*Smoking*

7. The Tenants that attended the hearing acknowledge smoking in the rental unit and continue to smoke in the rental unit to this date.
8. The Tenants' representative submits the clause in the tenancy agreement is ambiguous. I do not find this to be the case. Section 44 of the tenancy agreement is clear that smoking is not prohibited in the rental unit, however, the Tenants may smoke tobacco in specifically designated smoking areas.
9. BD and MD both testified that they did not read the tenancy agreement prior to execution. While that is unfortunate, a tenancy agreement is a legally binding document. There is no indication the Tenants were under duress or coerced into signing the agreement. BD and MD are both adults of reasonable intelligence. I find no reason to find the tenancy agreement voluntarily entered into by the parties to be invalid.
10. There was a third Tenant listed on the application, Keith Seaborn. He did not execute the tenancy agreement. On that basis, the Tenants' representative suggests the no-smoking clause is void. I do not find that to be the case.
11. It is not uncommon for a tenancy agreement to start out with one tenant and then additional parties become tenants throughout the tenancy agreement. When this happens, the additional tenants are bound by the same tenancy agreement as the original tenants.
12. KS did not attend the hearing despite being served notice of this hearing by the Board. If KS had concerns, or wanted to make submissions as to the validity of the tenancy agreement, he could have attended the hearing. Without hearing from KS, I cannot make a determination as to his understanding of the tenancy agreement.
13. There was suggestion at the hearing that the Tenants have disabilities and should be accommodated under the Human Rights Code (the 'Code'). However, as stated above, the

tenancy agreement provides designated areas. Accordingly, I find the Landlord's duty to accommodate under the Code has been met.

14. Based on the evidence before for the Board, I find the Tenants interfered with the Landlord's lawful right by smoking in rental unit contrary to the tenancy agreement.

#### *Relief from Eviction*

15. According to s. 83 of the Act when the Board hears an application for an order evicting a tenant, the Board must consider whether there are any circumstances that support granting relief from eviction.
16. The Landlord's agent testified at the hearing that there have been many complaints in the building about the Tenants' smoking. However, no other tenants testified at the hearing. If the smoking substantially impacted other tenants, it would be reasonable to expect those tenants affected would testify at the hearing.
17. 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." I find that the circumstances in this application do not rise to that level.
18. I find a conditional order requiring the Tenants to refrain from smoking the rental unit to be appropriate. The Landlord's do not believe the Tenants will be able to comply. That may be the case, but this is a long-term tenancy, and the Tenants should be given every opportunity to remain in the unit. Given the advance age of BD, I find it appropriate to give the Tenants some time to quit smoking before the conditional order takes effect.

#### **It is ordered that:**

1. The tenancy between the Landlord and the Tenants continues if the Tenants meet the conditions set out below.
  - Beginning January 1, 2024, The Tenants shall refrain from smoking in the rental unit for a period of twelve consecutive months. This includes all areas in the rental unit where smoking is prohibited.
  - The Tenants, or anyone they permit to enter the residential complex, shall refrain from committing a serious illegal act for a period of twelve months from the date of this order.
  - The Tenants, or anyone they permit to enter the residential complex, shall refrain from wilfully causing damage to the residential complex, or the property of another tenant, for the period of twelve months from the date of this order.
2. If the Tenants fail to comply with the conditions set out in paragraph 1 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.

3. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
4. If the Tenant does not pay the Landlord the full amount owing on or before September 23, 2023, the Tenant will start to owe interest. This will be simple interest calculated from September 24, 2023, at 6.00% annually on the balance outstanding.

**September 12, 2023**  
**Date Issued**

---

Bryan Delorenzi  
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 March 24, 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.