



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

Citation: DTSSAB v Dzambic, 2023 ONLTB 59281

Date: 2023-08-30

File Number: LTB-L-044436-22

In the matter of: 101, 25 Tweedsmuir Avenue
Kirkland Lake ON P2N3M8

Between: DTSSAB Landlord

And

Austin Dzambic Tenant

DTSSAB (the 'Landlord') applied for an order to terminate the tenancy and evict Austin Dzambic (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.

This application was heard by videoconference on August 21, 2023.

Only the Landlord's Agent, C. Danchuk, attended the hearing.

As of 10:16 a.m., the Tenant was 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.

The following witness testified at the hearing:
Rolly Sabourin (RS) on behalf of the Landlord

Determinations:

1. The Landlord served two Notices to End Tenancy for Interfering with Others, Damage or Overcrowding (N5 Notice) alleging that the Tenant substantially interfered with another tenant's or the Landlord's reasonable enjoyment of the residential complex, and/or lawful rights, privileges, or interests pursuant to section pursuant to section 64 of the *Residential Tenancies Act, 2006* (the 'Act')
2. Section 64 of the Act states:
 - (1) 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

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landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant. 2006, c. 17, s. 64 (1).

- (2) A notice of termination under subsection (1) shall,
- (a) provide a termination date not earlier than the 20th day after the notice is given;
 - (b) set out the grounds for termination; and
 - (c) require the tenant, within seven days, to stop the conduct or activity or correct the omission set out in the notice. 2006, c. 17, s. 64 (2).
- (3) The notice of termination under subsection (1) is void if the tenant, within seven days after receiving the notice, stops the conduct or activity or corrects the omission.

First N5 Notice

3. The first N5 Notice was served on the Tenant on July 14, 2022 and provided a termination date of August 3, 2022. I am satisfied that the first N5 Notice was properly served in accordance with section 64 of the Act.
4. The allegations in the first N5 Notice were:
- On July 14, 2022, at 1:00 a.m., it was reported by multiple tenants who were woken up that you were lighting off fireworks directly outside your unit on the Landlord's property; and
 - On July 14, 2022, it was also reported that you had a fire outside your unit on the Landlord's property
 - On July 14, 2022, the police were called and attended the property giving you a warning about this conduct

Second N5 Notice

5. The second non-voidable (N5 Notice) was served on the Tenant on July 22, 2022 and provided a termination date of August 6, 2022.
6. The second N5 Notice was served pursuant to section 68 of the Act which states:
- (1) A landlord may give a tenant notice of termination of the tenancy if,
 - (a) a notice of termination was given to the tenant under section 62, 64 or 67; and
 - (b) more than seven days but less than six months after the notice mentioned in clause (a) was given to the tenant, an activity takes place, conduct occurs or a situation arises that constitutes grounds for a notice of termination under section 60, 61, 62, 64 or 67, other than an activity, conduct or a situation that is described in

subsection 61 (1) and that involves an illegal act, trade, business or occupation described in clause 61 (2) (a). 2006, c. 17, s. 68 (1); 2017, c. 13, s. 12.

(2) The notice under this section shall set out the date it is to be effective and that date shall not be earlier than the 14th day after the notice is given.

7. The allegation in the second N5 Notice was:
 - On July 22, 2022, it was reported by multiple tenants that you had a fire directly outside your unit, the tenants reported that you lit your mattress on fire and police were contacted as a result; and
 - On July 22, 2022, it was also reported that another tenant asked you to put out the fire and you cursed and yelled at them and refused to do so.
8. The alleged conduct occurred more than eight days after the first N5 Notice was served on the Tenant on July 14, 2022. Therefore, the Landlord was entitled to serve the second N5 Notice.
9. Based on the uncontested evidence before me, I am satisfied that the Tenant's conduct on July 22, 2022 substantially interfered with another tenant's and the Landlord's reasonable enjoyment of the residential complex and their lawful rights, privileges and interests.
10. The Landlord's Agent stated that the Tenant had been sent a warning letter on May 31, 2021 advising the Tenant that fires are not permitted on the property and that the Tenant must dismantle a fire pit that was constructed. She also stated that the Tenant is having these fires just outside his unit which is only about 3 feet from the building and there is another tenant's balcony above.
11. RS testified that he resides in the residential complex above the Tenant. He witnessed both incidents on July 14, 2022 and July 22, 2022. He testified that the incident on July 22, 2022 began with the Tenant dragging his mattress and box spring outside his unit where he began chopping it up with an axe. RS testified that the Tenant then put some type of fuel/oil on the mattress and box spring and lit it. RS also testified that the flames went up at least 6 feet in the air. RS testified that the police were then called.
12. RS further testified that he does not feel safe and can't leave his windows open because the smoke from the Tenant's fires enter his unit. During the first fire on July 14, 2022, RS testified that he was awoken from his sleep to find his unit filled with smoke.
13. The Tenant was in possession of the rental unit on the date the application was filed.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. There is no last month's rent deposit.

Relief from Eviction

16. 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.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before September 10, 2023.
2. The Tenant shall pay the Landlord compensation of \$4.57 per day for the use of the unit starting September 1, 2023 until the date the Tenant moves out of the unit.
3. The Tenants shall also pay to the Landlord costs of \$186.00 for filing the application.
4. If the Tenant does not pay the Landlord the full amount owing on or before September 10, 2023, the Tenant will start to owe interest. This will be simple interest calculated from September 11, 2023 at 6.00% annually on the balance outstanding.
5. If the unit is not vacated on or before September 10, 2023, then starting September 11, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after September 11, 2023.

August 30, 2023

Date Issued

Lisa Del Vecchio

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 11, 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.