



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

Citation: sharv v Siconolfi, 2023 ONLTB 57251

Date: 2023-08-21

File Number: LTB-L-044042-22

In the matter of: 1A, 1 Ontario Lane
St. Catharines ON L2R5M2

Between: S harv and 2400795 Ontario Inc Landlord

And

Joe Siconolfi Tenant

Sharv and 2400795 Ontario Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Joe Siconolfi (the 'Tenant') because:

- the Tenant has not paid the rent he owes (the L1 Application).

The Landlord claimed compensation for each day the Tenant remained in the unit after the termination date.

The Landlord also applied for an order to evict the Tenant as a result of the Tenant's conduct:

- this conduct substantially interfered with the Landlord's reasonable enjoyment of the residential complex or another tenant's lawful right, privilege or interest (the L2 Application).

This application was heard by videoconference on July 25, 2023.

The Landlord, the Landlord's Agent Jordan Saksena and the Tenant attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for rent arrears.

2. Therefore, I will be ordering eviction as of September 30, 2023, and an order for payment of the arrears owing.
3. The Tenant was in possession of the rental unit on the date the application was filed.

The L1 Application

4. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
5. As of the hearing date, the Tenant was still in possession of the rental unit.
6. The lawful rent is \$860.20. It is due on the 1st day of each month.
7. Based on the Monthly rent, the daily rent/compensation is \$28.28. This amount is calculated as follows: $\$860.20 \times 12$, divided by 365 days.
8. The Tenant has paid \$9,000.00 to the Landlord since the application was filed.
9. The rent arrears owing to July 31, 2023 are \$3,841.80. The Tenant agreed that this amount was owing.
10. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
11. There is no last month's rent deposit.

The L2 Application

12. The Landlord served the Tenant with three different N5 notices of termination ("N5 notice") alleging 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.
13. As explained below, the second N5 notice served on August 5, 2022 and the third N5 notice served on April 14, 2023 are defective and cannot be considered. However, the application can proceed on the basis of the first N5 notice served on July 14, 2022. The L2 application was filed on August 5, 2022, within 30 days of the termination date on the first N5 notice.

First N5 Notice of Termination: Substantial interference

14. On July 14, 2022, the Landlord gave the Tenant an N5 notice of termination deemed served on the same date. The Termination Date was August 4, 2023, which satisfies the

requirements of s. 64(2)(a) of being no earlier than the 20th day after the notice is given. The Tenant could void the notice by abstaining from the conduct complained of in the notice, within 7 days, or from July 15, to July 21st.

15. The first notice of termination contains the following allegations:

- On June 21, 2022, the commercial tenant reported that the Tenant yelled and screamed at him on multiple occasions when he is working in the garage, which is part of the residential complex.
- On June 27, 2022, numerous complaints were received that the Tenant parked his vehicle in a way that prevents other tenants and customers from parking, despite the fact that the Tenant does not have a parking spot at the residential complex.
- On July 6, 2022, the Tenant acted confrontationally towards a customer coming into the commercial business, got up in their personal space, yelled and made an inappropriate scene.

Evidence and Submissions

16. The Tenant admitted that he does park illegally at the residential complex for 3 minutes or so when he is doing his groceries. He testified that he gets permissions to do so from a tenant upstairs.
17. As a result of the Tenant's own admission, I find that the allegation of illegal parking has been proved on a balance of probabilities, as an ongoing issue.
18. The Landlord testified that even the week before the hearing, they received a complaint from the commercial tenant. A copy of the complaint was produced in evidence.
19. The Tenant testified that he did not yell as alleged. He argued that he is not confrontational.
20. He also argued that this was hearsay as the commercial tenant was not at the hearing to give evidence.

Analysis

21. Although this is a form of hearsay, the real issue is how much weight it should be afforded.
22. I find that the Landlord's agent is a viable witness to testify to complaints made during her work for the Landlord. The complaints were received by her, for example, in the course of her work. Further, she testified that the Tenant was confrontational and rude with her as well, which is clearly not hearsay, as she has given direct evidence.
23. I prefer her evidence to that of the Tenant because it was objective and credible. I do not accept the Tenant's allegation that the Agent is lying.

24. I find that the allegations in the first notice have been proved on a balance of probabilities, and that the conduct of the Tenant substantially interfered with the Landlord's reasonable enjoyment of the residential complex or another tenant's lawful right, privilege or interest. The evidence of unlawful parking was admitted by the Tenant. The yelling at the commercial tenant was proved by a letter from the tenant and as it was submitted to the agent in the course of her duties, I afford it more weight than the mere denials of the Tenant. The Tenant should not be parking in the parking spots of other tenants. It is inconvenient for them and it does interfere with their lawful use of the complex. They are paying for these spots and they should not be subjected to use by the Tenant.
25. As for the commercial Tenant, being yelled at is a humiliating experience and no person should be subjected to this type of treatment.
26. The allegation of the Tenant being confrontational with a customer has not been proved on a balance of probabilities. There was no documentary evidence of this and I find that the details of the event are lacking.

Tenant did not void the first N5

27. The Landlord testified that after the N5 was served, the Tenant continued to park in the spots of other tenants on July 20th, 2022 and up to the hearing this conduct persisted. As noted, the Tenant admitted this at the hearing.
28. The Landlord also testified that the Tenant continued to interfere with the commercial tenant on the main floor. For example, he continued to yell and scream at the commercial tenant during the voiding period and even a week before the hearing, a similar a new complaint was received from the commercial tenant.
29. A text message from the Tenant dated 15 July 2022, was entered into evidence. It establishes that the Tenant contacted the Executive Director on his personal phone (rather than submitting a tenant complaint through the appropriate channels), and called her and the Landlord both hurtful names and said inappropriate things towards other tenants
30. However, the Landlord did not testify to other instances of the Tenant acting confrontationally towards customers coming into the commercial business, during the voiding period. Therefore, I find that the Tenant voided that portion of the N5 notice.
31. I find that the Tenant did not stop the conduct or activity within seven days after receiving the N5 notice of termination.
32. Therefore, the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).

Second N5 Notice

33. On August 5, 2022, the Landlord gave the Tenant a second N5 notice of termination, deemed served on the same date. The second notice of termination contains the following allegations:

- On July 15, 2022, the Tenant contacted the Executive Director on his personal phone (rather than submitting a tenant complaint through the appropriate channels), and called her and the Landlord both hurtful names and said inappropriate things towards other tenants.
- On July 20th, the Tenant continued to park his car on the property despite the fact that he does not have a parking space with his lease, blocking the available parking for other tenants and customers.
- On July 29th, on numerous occasions, the Tenant was confrontational with the Landlord and maintenance staff and has been trying to bait them into hitting the Tenant while he records this on his cell phone saying hurtful things while they are working outside.

34. The second notice was non-voidable. The Termination Date was 20 August 2022.

35. The second notice was served pursuant to s. 68 of the Act, which states:

68 (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).

Same

(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.

36. The incidents of July 15, 2022 and July 20, 2022, did not occur more than 7 days and less than 6 months after the first N5 notice was served on July 14, 2022. Therefore, this portion of the N5 is not valid.

37. With respect to the alleged incident on July 29, 2022, while that date is outside of the 7 day voiding period, the reference to the conduct occurring on “*numerous occasions*” lacks sufficient detail. Pursuant to subsection 43(2) of the Act a notice of termination must set out the reasons and details respecting the termination. Pursuant to the Divisional Court’s decision in *Ball v. Metro Capital Property*, [2002] O.J. No. 5931, a notice that fails to provide sufficient details, including dates and time of the conduct, is void.

Third N5 Notice

38. The Landlord served a third N5 notice on the Tenant on April 14, 2023, and though the date was wrongly written as 04/14/2023, I am satisfied it was served on April 14, 2023, upon hearing the evidence of the Landlord who served the document. The Termination date was May 5, 2023.
39. The third N5 contains the following allegations:
 - On April 11, a written complaint was received that the Tenant interacted in a volatile manner with another tenant (swearing, shouting, and accusing them of looking in your apartment window). The ruckus was loud enough to disturb another tenant as well.
40. The third notice of termination is not properly before me as it was served after the Landlord filed this application on August 5, 2022. Pursuant to section 69(1) of the Act, a landlord can only file an eviction application after serving a notice of termination.
41. As the third N5 was served after the L2 application had been served, I will not treat the third N5 as part of the L2 application, but as evidence to consider under the relief from eviction considerations below.

Relief from Eviction

42. 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 postpone the eviction until September 30, 2023 pursuant to subsection 83(1)(b) of the Act.
43. The acts complained of in the first N5 notice continue to this day, despite this application.
44. The Tenant continues to engage in new acts which disturb the reasonable enjoyment of the Landlord and other tenants. For example, a written complaint was received from a tenant that the Tenant accused her of stocking him by looking in at his window. This complaint was similar to other complaints of the Tenant acting in a volatile manner towards other tenants. I give more weight to this evidence of continuing conduct by the tenant which interferes with the reasonable enjoying of the premises by other tenants than mere denials by the Tenant. The cumulative evidence of the Agent, the Landlord, the executive director and this tenant all tell the same story of the Tenant acting in an inappropriate volatile manner with other tenants and staff of the complex.
45. The Tenant did not appear to have any insight into these issues and simply denied everything.
46. The other tenants in the building have expressed exhaustion in dealing with the Tenant, as the Agent testified.
47. The Tenant said that he does not know where to go from here.

48. With respect the rent arrears issues, the Landlord has tried to negotiate a payment plan, but to no avail. The Tenant has refused to sign anything to show that he is a tenant.
49. The Tenant repeatedly insisted that all the allegations are lies and accused the Landlord of being a bully. He accused the Landlord of bullying him and his mother. He claimed that he had made an offer to pay \$2,300, but the Landlord denied any knowledge of this. The Tenant said he had \$900 from OW and \$1400 from community care which he offered to the Landlord. I accept the Landlord's evidence that this did not happen because I did not find the Tenant to be a credible witness.
50. As for the Landlord, they are operating the building at a loss due to these issues. There were two previous orders for eviction with this Tenant.
51. Clearly, providing the Tenant with relief from eviction has not been effective.
52. I am not ordering a payment plan, as requested by the Tenant, because I accept the Landlord's evidence that it has not worked in the past.
53. I will, however, grant a delayed eviction, to give the Tenant time to move.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before September 30, 2023.
2. If the unit is not vacated on or before September 30, 2023, then starting October 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. 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 October 1, 2023.
4. The Tenant shall pay to the Landlord \$3,688.60, which represents the arrears up to July 25, 2023, the date of the hearing, on or before September 30, 2023.
5. The Tenant shall also pay the Landlord compensation of \$28.28 per day for the use of the unit starting July 26, 2023 until the date the Tenant moves out of the unit.
6. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
7. The total amount the Tenant owes the Landlord is \$3,874.60.
8. 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.

August 21, 2023

Date Issued

James Campbell
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 expires on April 1, 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.