



**Order under Section 69 / 89
Residential Tenancies Act, 2006**

Citation: Johncox v Gould, 2023 ONLTB 52603

Date: 2023-08-14

File Number: LTB-L-072301-22

In the matter of: 151 ELLIOTT ST
LONDON ON N5Y2G1

Between: Thomas Johncox Landlord

And

Shane Gould Tenant

Thomas Johncox (the 'Landlord') applied for an order to terminate the tenancy and evict Shane Gould (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 Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises;
- the Tenant has been persistently late in paying the Tenant's rent.

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

The Landlord also applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

This application was heard by videoconference on June 29, 2023.

Only the Landlord, and the Landlord's legal representative, Carmen Dawdy ('CD'), attended the hearing.

The Tenant initially signed into the hearing, but disconnected at approximately 12:00 noon and did not return. CD said she phoned the Tenant, the phone rang but he did not answer, so she left him a voicemail, and also sent him a text message, but he did not respond. The Tenant also did not contact the LTB to provide any explanation as to why he disconnected, nor did anyone else contact the LTB or connect to the hearing on the Tenant's behalf. As of 3:02 p.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. It did not appear that the Tenant disconnected because of any technical difficulties. In the absence of any explanation for why the Tenant disconnected and in view of prejudice to the Landlord if the matter were

adjourned, the hearing proceeded with only the Landlord's evidence.

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 compensation in the application.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N5 Notice of Termination

3. On November 15, 2022, the Landlord gave the Tenant an N5 notice of termination of tenancy by mail, deemed served on November 20, 2022. The N5 notice contains the following allegations: the Landlord attended the property on October 6, 2022 and found that a large window at the front of the rental unit was broken. The Tenant's father said at the time that a ball had been thrown through the window. The Landlord was told the Tenant would replace the window, but the was not done by November 4, 2022 when the Landlord reattended. When the Landlord attended on November 4, 2022, there was substantial clutter and lack of cleanliness in the backyard.
4. The Landlord said the rental unit is a 3-bedroom, 2-bathroom detached house with a large yard.
5. The Landlord presented 2 photographs of the backyard of the rental unit showing significant clutter, including garbage, boxes, shovels, chairs, ladders, tarps, and other debris. These are the photos taken on November 4, 2022 which were also attached to the N5 notice. The Landlord also presented another photograph of the same area that the Landlord took a couple months later. There was still significant debris and other objects being stored in the yard. The Landlord's evidence was that the Tenant did not rectify the issue of substantial clutter and debris in the yard.
6. The Landlord also presented a photograph of the broken front bay window on the rental unit. The outer pane of the glass is shattered. The Landlord confirmed that he was told by the Tenant's father that the window was broken by a baseball.
7. The Landlord presented an estimate to replace the broken window for \$3,750.51. He said he originally estimated \$2,000.00 to simply have the outer pane replaced, which is why only \$2,000.00 is claimed in the application. He said that his contractor told him that the entire window and casement would need to be replaced, which is why the cost of the estimate is higher.
8. I find therefore that the willful or negligent conduct of the Tenant or someone living with or visiting the Tenant has caused undue damage to the rental unit. In particular, I find that the front bay window was broken when it was hit with a ball. The Tenant did not repair or replace the window, or pay the Landlord any compensation for the repair or replacement of the window.
9. I also find that the excessive clutter and debris in the yard substantially interferes with the Landlord reasonable enjoyment of the rental unit or residential complex, and with his lawful rights, privileges, and interests. Based on the evidence before me, this issue has not been rectified by the Tenant.

10. The Tenant did not void the N5 notice by rectifying the issues alleged therein within seven days of being served with the notice. The Landlord said that none of these issues have been addressed by the Tenant as of the hearing date. In addition, the Landlord has found that a basement window pane has also been broken. It appears to have been kicked in, or broken somehow. The Landlord said this was not reported to him.
11. The Landlord sought an order terminating the tenancy and evicting the tenant.

N8 Notice of Termination

12. On November 15, 2022, the Landlord gave the Tenant an N8 notice of termination. The notice of termination alleges that the Tenant failed to pay the rent by the date it was due in 8 of the 12 months from December 2021 to November 2022.
13. Based on the uncontested evidence before me, I find that the Tenant has persistently failed to pay the rent on the date it was due. The rent is due on the first day of each month. The rent was paid late 8 times in the 12 months between December 2021 and November 2022, as alleged in the N8 notice. In particular, the rent was paid late for the months of December 2021, and January, February, March, April, May, and June 2022, and the Tenant did not pay the rent for November 2022.
14. The Tenant has not paid any rent to the Landlord since November 2022.
15. The Tenant received warnings relative to his late and non-payment of rent, including N4 notices being given to him on December 8, 2021, January 4, 2022, and March 2, 2022.
16. The Landlord's evidence was that the Tenant's late and non-payment of the rent has caused him financial hardship. He said that he has a mortgage on the rental unit that he must pay, as well as property taxes. He also said he has two children, one of whom has a disability. He said the Tenant promises to pay the rent, but has not followed through on that promise.
17. The Landlord sought an order terminating the tenancy and evicting the Tenant.

Daily Compensation and Rent Deposit

18. The Tenant was required to pay the Landlord \$8,820.49 in daily compensation for use and occupation of the rental unit for the period from December 14, 2022 to June 29, 2023.
19. Based on the Monthly rent, the daily compensation is \$44.55. This amount is calculated as follows: \$1,355.00 x 12, divided by 365 days.
20. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
21. There is no last month's rent deposit.

Compensation for Damage

22. As determined above, the Tenant, another occupant of the rental unit or a person whom the Tenant permitted in the residential complex wilfully or negligently caused undue

damage to the rental unit or residential complex by breaking the outer pane of the front bay window of the home.

23. The Landlord proved he will incur reasonable costs of \$2,000.00 to replace the broken window.

Relief from Eviction

24. As noted above, after persistently failing to pay the rent by the date it was due, as set out in the N8 notice, the Tenant stopped paying rent entirely, and failed to pay any rent beginning in November 2022. This has caused the financial hardship for the Landlord.
25. The Tenant has also not rectified the issues identified in the N5 notice, and the Landlord has since found another broken window in the home.
26. The Landlord and CD were not aware of any circumstances that should be considered with respect to whether eviction should be delayed or denied.
27. 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 Tenant is terminated. The Tenant must move out of the rental unit on or before August 14, 2023.
2. If the unit is not vacated on or before August 14, 2023, then starting August 15, 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 August 15, 2023.
4. The Tenant shall pay to the Landlord \$8,820.49, which represents compensation for the use of the unit from December 14, 2022 to June 29, 2023.
5. The Tenant shall also pay the Landlord compensation of \$44.55 per day for the use of the unit starting June 30, 2023 until the date the Tenant moves out of the unit.
6. The Tenant shall pay to the Landlord \$2,000.00, which represents the reasonable costs of replacing the damaged property.
7. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
8. The total amount the Tenant owes the Landlord is \$11,006.49.
9. If the Tenant does not pay the Landlord the full amount owing on or before August 14, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 15, 2023 at 6.00% annually on the balance outstanding.

August 14, 2023

Date Issued

Mark Melchers

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 February 15, 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.

2023 ONL TB 52603 (CanLII)