



**Order under Section 69 / 88.1 / 89
Residential Tenancies Act, 2006**

Citation: Naderi v Ravikumar, 2023 ONLTB 54725

Date: 2023-08-10

File Number: LTB-L-032618-23

In the matter of: 1604, 161 ROEHAMPTON AVE
TORONTO ON M4P0C8

Between: Nasim Naderi Landlords
Alireza Akbari

And

Shanthosh Ravikumar Tenant

Nasim Naderi and Alireza Akbari (the 'Landlords') applied for an order to terminate the tenancy and evict Shanthosh Ravikumar (the 'Tenant') because:

- 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; and
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully caused undue damage to the premises.

The Landlords also claimed compensation for each day the Tenant remained in the unit after the termination date. The Landlords applied for an order requiring the Tenant to pay the Landlords' 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.

The Landlords also applied for an order requiring the Tenant to pay the Landlord's' reasonable outof-pocket expenses that are the result of the Tenant's conduct or that of another occupant of the rental unit or someone the Tenant permitted in the residential complex. This conduct substantially interfered with the Landlords' reasonable enjoyment of the residential complex or another lawful right, privilege or interest.

This application was heard by videoconference on June 6, 2023.

The Landlords and the Tenant attended the hearing. The Tenant spoke to Tenant Duty Counsel prior to the hearing. Daryl Norrie ('D.N.') appeared as a witness for the Landlord.

Determinations:

1. In all cases before the Board, the onus rests with the applicant to prove his or her case on a balance of probabilities. For the reasons that follow, I find that the Landlords have failed to prove that the conduct of the Tenant or someone living or visiting him constitutes serious impairment of safety.

N7 Notice of Termination

2. On April 23, 2023, the Landlords gave the Tenant an N7 notice of termination ('N7 Notice') deemed served on April 23, 2023. The termination date on the N7 Notice is May 4, 2023.
3. The N7 Notice contains the allegations that on April 12, 2023, the Tenant deflated the tires on two vehicles located at the front entrance of the residential complex and the Tenant harassed the condominium property manager.
4. The N7 Notice also included allegations with respect to a letter received by the condominium corporation's lawyer and the Landlord's attempts to communicate with the Tenant.
5. As explained at the hearing, the allegations in paragraph 5 above, do not meet the requirements of subsection 66(1) of the Act and therefore will not be considered.

Landlords' evidence – Landlord's witness

6. In her testimony, D.N. stated she is the property manager for the condominium corporation and has been employed with the corporation for eighteen months. She stated the residential complex is a forty storey building consisting of 576 units. The residents are between the ages of 25 and 40.
7. D.N. stated that on April 12, 2023, she was called to the building on an emergency relating to a gas leak. While in the building addressing the emergency she was advised by a contractor that someone was deflating the tires of vehicles parked at the front entrance. She stated she approached a man sitting on a cement wall outside the building and asked him if he was a resident and did he deflate any tires. The man affirmed he is a tenant and admitted to deflating the tires. She stated the Tenant yelled profanities at her and used a racial slur calling her a "Karen" which she understood to be a reference to her being an older, white woman. D.N. contacted the police.

8. In conversation with the police, D.N. stated the police officer advised her that if she had driven with a deflated left front tire, an accident could have occurred possibly resulting in serious injury. The police officer was not called as a witness to testify to either this comment or if any charges were laid against the Tenant.

Landlords' evidence – testimony of Alireza Akbari ('A.A.')

9. In her testimony, A.A. stated the Tenant's behaviour has been an ongoing issue. She stated their have been ongoing noise complaints and she has received a letter from the condominium corporation's lawyer advising her of her responsibility to address the complaints with the Tenant.
10. A.A. requested that the Board consider the ongoing behaviour of the Tenant with respect to noise complaints and rent arrears. She stated evidence had been submitted to the Board for its review and consideration. She was steadfast in her resolve to be heard on all issues of the tenancy and was visibly upset with the Tenant's behaviour.
11. As the Tenant's behaviour with respect to noise complaints does not form part of the N7 Notice nor constitute a serious impairment of safety and rent arrears cannot be addressed at the hearing of an L2 application, A.A. was advised the Board does not have the jurisdiction to hear such evidence and therefore, noise complaints and rent arrears could not be considered.

Tenant's evidence

12. The Tenant did not dispute he deflated the tires located at the front entrance of the building on April 12, 2023. He stated he could not justify his actions and apologized to D.N. for causing her any potential harm. He did not deny that he used profanity during the confrontation with D.N. but in his defence, he stated he reacted in a negative way as he felt he was being harassed by her.

Analysis

13. As this is a Landlord application, the Landlords bear the onus of proving on a balance of probabilities that the Tenant has seriously impaired the safety of another within the residential complex and/or wilfully damaged the rental unit or residential complex. As indicated below, I find that the Landlords have failed to prove their case on a balance of probabilities and as such, the application must be dismissed.
14. Subsection 66(1) of the *Residential Tenancies Act, 2006* (the 'Act') sets out:

66 (1) A landlord may give a tenant notice of termination of the tenancy if,

- (a) an act or omission of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant seriously impairs or has seriously impaired the safety of any person; and
- (b) the act or omission occurs in the residential complex.

15. In order to be successful on this ground, the Landlords must establish that the effect of the actions of the Tenant, someone visiting or living with the tenant threatens the wellbeing or physical integrity of another person to such a degree that termination of the tenancy is reasonable in order to ensure the safety of others. In other words, the question to be answered is whether the actions of a tenant or tenant's occupant or guest put someone at serious risk of physical harm. Not every risk of physical harm to another will meet the test, as the impairment of safety must be serious.
16. In my view, the actions of the Tenant on April 12, 2023, do not constitute a serious impairment of safety to another person. While D.N. believed that driving a vehicle with a flat tire could have caused a serious accident, I find that a reasonable person, aware of the condition, would not simply get into their vehicle and drive away.
17. To terminate a tenancy for serious impairment of safety, there must be evidence that someone's safety has actually been impaired, and in a serious manner, or that serious impairment of safety is imminent. It is not sufficient to state that some harm might have happened, which was the Landlord's and D.N.'s testimony.
18. The term "harassment" is not defined in the Act. Black's Law Dictionary defines harassment as "a course of conduct directed at a specific person that causes substantial emotional distress in such person and serves no legitimate purpose". Harassment can also be defined as "conduct which one knows or should know to be unwelcome by the other person and which one pursues for no legitimate purpose." See *Grimard v. Knight*, [2006] O.R.H.T.D. No. 5 at para. 11.
19. Based on the evidence before me, I am not satisfied the Tenant harassed D.N. to such an extent that her safety was at risk. I say this because it is clear from the testimony of D.N. there is genuine dislike for the Tenant and this animosity stems from other issues not properly before the Board. Further, this was a single incident where D.N. was not aware the Tenant lived in the building and no further evidence was provided to show the Tenant has continued a pattern of harassment. Although the discussion between D.N. and the Tenant may have been heated, it does not rise to the level of serious impairment of safety.
20. As a result, I am not satisfied that the Tenant seriously impaired the safety or harassed another person and therefore the portion of the application relating to termination of the tenancy is dismissed.

Undue damage

21. In the application, the Landlords sought out-of-pocket expenses for damage caused to a light fixture in the rental unit. As no evidence was lead with respect to the alleged damage, this claim is denied.

Compensation for substantial interference

22. In the application, the Landlords sought out-of-pocket expenses for substantial interference alleging they incurred legal fees from condominium corporation resulting from the Tenant's behaviour contrary to the By-laws and Rules of the Corporation.
23. The Landlords submitted a letter from the legal firm retained by the condominium corporation dated April 19, 2023 as evidence. In this letter, it is demanded of the Landlords they pay the amount of \$950.00 for legal fees incurred by the condominium corporation.
24. As this claim for out-of-pocket-expenses was not proceeded by a proper notice of termination, the Landlords may only claim for compensation of these monies. The Landlords submitted evidence dated May 5, 2023 which shows they have paid the outstanding amount to the condominium corporation's legal firm. As such, I am satisfied the Tenant's behaviour caused substantial interference to the Landlords and therefore I find the Tenant is responsible to reimburse the Landlords for this expense.

It is ordered that:

1. The Landlords' application relating to the allegations contained in the N7 Notice is dismissed.
2. The Tenant shall pay to the Landlord \$950.00, which represents the reasonable out-of-pocket expenses the Landlords have incurred or will incur as a result of the substantial interference.
3. The Tenant shall also pay to the Landlords \$186.00 for the cost of filing the application.
4. The total amount the Tenant owes the Landlords is \$1,136.00.
5. If the Tenant does not pay the Landlords the full amount owing on or before August 21, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 22, 2023 at 6.00% annually on the balance outstanding.

August 10, 2023

Date Issued

Susan Priest

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.