



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

Citation: Meijaard v Clark, 2023 ONLTB 50542

Date: 2023-07-20

File Number: LTB-L-068368-22

In the matter of: 234 CONCESSION 10 TOWNSEND ROAD WATERFORD
ON N0E1Y0

Between: Hetty Meijaard Landlord

And

Brittany Clark Tenants
Kris a.k.a. K Daniel Grigsby

Hetty Meijaard (the 'Landlord') applied for an order to terminate the tenancy and evict Brittany Clark and Kris a.k.a. K Daniel Grigsby (the 'Tenants') 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 Tenants.

This application was heard by videoconference on April 21, 2023. The Landlord and the Tenant, Daniel Grigsby, attended the hearing. The Landlord was represented at the hearing by C. Boyd. The Tenants were represented at the hearing by K. Smeer.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the Tenants have substantially interfered with the Landlord's reasonable enjoyment of the rental unit and lawful right of the Landlord. However, the tenancy continues if the Tenants comply with the conditions of this order.

Preliminary Issue – Disclosure of Evidence

2. Prior to the hearing, the Landlord's representative sought to exclude the Tenants' responding evidence.

3. *LTB Rule 19.2* says any responding evidence must be provided at least five days in advance of the hearing. The responding evidence was disclosed to the Landlord's representative on April 15, 2023. Since April 15, 2023, was a Saturday, the Landlord's representative did not open the documents until the following Monday, four days prior to the hearing.
4. The Landlord's representative takes the unusual position that Saturdays do not count as a day, therefore the evidence was only served four days prior to the hearing and should be excluded.
5. I do not find this to be the case. The reply evidence was served by e-mail. *Rule 3.9* says documents are considered the day they are sent by e-mail. The rule does not say that documents e-mailed on weekends are considered served on the following Monday. Accordingly, the Tenants' responding evidence admitted as presented at the hearing.

Notice of Termination

6. On September 2, 2021, the Landlord served the Tenants a N5 notice to terminate the tenancy. The notice alleges the following:
 - The Tenants let their contents insurance lapse contrary to the terms of the tenancy agreement.
 - The Tenants refused to allow an insurance inspector on the premises after the Landlords provided written notice to enter.
 - The Tenants used a fire pit, located on the property, in a way that is contrary to a municipal by-law.
 - The Tenants changed the lock on the rental unit contrary to s.35 of the *Residential Tenancies Act, 2006*. ('Act')
 - The Tenants have aggressive dogs that are continuously unsupervised and pose a significant health and safety risk.
 - The Tenants continuously block the Landlord's access to her farm located on the rental property.
 - The Tenants removed surveyor locates from the property.
 - The Tenants have failed to remove their belongings from a storage building which is not part of the tenancy agreement.
7. The Landlord seeks to terminate the tenancy in accordance with the notice of termination.

Damages

8. In addition to termination of the tenancy, the Landlord seeks damages from the Tenant related to a loss of revenue and damage to the property caused by the Tenants' dogs.

Contents Insurance

9. The parties do not dispute the tenancy agreement requires the Tenants to maintain content insurance and provide the Landlord proof of insurance as requested.
10. On July 13, 2021, the Landlord sent the Tenants an e-mail requesting proof of content insurance. The Tenants did not respond. A second e-mail was sent August 13, 2021. Yet again the Tenants did respond. Finally, the Tenants representative sent an e-mail to the Landlord's representative on October 18, 2021 showing proof of insurance for the period July 31, 2021 to July 31, 2023.
11. The Board has held, in *SWL-07401-17-RV*, a tenant's failure or refusal to provide requested proof of insurance coverage serves as interference with a landlord's lawful right, when proof of insurance is required under the tenancy agreement. I find that to be the case here.
12. In the present case, there was no dispute that the Landlord had a lawful right to require the Tenants to provide proof that they have the requisite tenant insurance in full force and effect upon request of the Landlord at any time. The Landlord also demonstrated that it requested the required proof on two separate occasions. The Tenants' failure or refusal to provide requested proof of insurance coverage served as a complete interference with that lawful right.

Insurance Inspection

13. The Landlord's application alleges the Tenants interfered with the Landlord's lawful right to have an insurance inspector inspect the rental unit.
14. The difficulty for the Landlord is proper notice was not given under the Act.
15. Section 27(1) of the Act allows a landlord to enter the rental unit, to allow a potential insurer to view the rental unit, provided the landlord gives the tenant at least 24 hours written notice of a landlord's intention to enter. Section 26(1)(b) of the Act allows a landlord to enter a rental unit at any time without written notice as long as the tenant consents at the time of entry. Neither s.27(1) nor s.26(1)(b) was complied with.
16. The Landlord sent the Tenant e-mail on July 8, and July 14, 2021, advising the Tenants of an insurance inspection on July 15, 2021. The Tenants did not respond. The Landlord

emailed the Tenants again on August 3, 2021, advising the Tenants of another possible inspection on August 16, 2021.

17. *Rule 3.3* specifically addresses notices to enter under s.27 of the Act. The rule says a notice under s.27 may be served by e-mail if the Tenant(s) consented in writing to service by e-mail.
18. The Tenants did not provide their written consent to service of documents by e-mail. Therefore, I find the notices of entry given the Tenants were invalid. The Landlords had no right to enter the rental unit without given proper notice. Any damages related to an uninspected rental unit are to be borne by the Landlord.
19. On September 20, 2021, the Landlords insurance agent was permitted to enter the premises and conduct an investigation. The inspection uncovered that a woodstove and new lighting had been installed in the small garage/workshop without the Landlord's consent.
20. As a result, the Landlord could not be insured until the Tenants provided proof of the woodstove being removed and the faulty wiring repaired.
21. I accept the Landlord's evidence in this regard. I find the Tenants substantially interfered with the Landlord's right to have the rental unit insured.

Illegal Fire Pit

22. The Landlord's application alleges the Tenants utilized a fire pit on the rental property that violates a Norfolk County municipal by-law. The Landlord entered into evidence a copy of Norfolk County Bylaw 2016-72.
23. I have reviewed the Bylaw. I note that the by-law does not prohibit recreational fires. However, the by-law does state that a recreational fire must not be used to burn waste. The Landlord entered into evidence pictures of the fire pit, taken by the Landlord, depicting garbage being burned in the firepit.
24. I accept the Landlord's evidence in this regard. I find the Tenants substantially interfered with the Landlord by using the rental unit in a way that violated a municipal by-law.

Illegal Lock Change

25. The Landlord alleges the Tenants have changed the lock to the rental unit without the consent of the Landlord. The Tenant. I accept the Landlord's evidence in this regard.
26. Section 35 of the Act says a tenant shall not alter the locking system on a door giving entry to a rental unit. I find the Tenants' breach of s.35 of the Act substantially interferes with the Landlord's right to have a key to the rental unit.

Unsupervised/Dangerous Animals

27. The Landlord's application alleges the Tenants often leave their dogs unsupervised posing a health and safety risk. Further, the Landlord alleges the dogs caused damage to the property.
28. The parties appeared before the Board on this issue. *SOL-246331-21* has already determined that the dogs are not dangerous and do not pose a health and safety risk. I find the Landlord's attempt to terminate the tenancy on this basis to be res judicata.
29. With respect to alleged damage, I do not find it be substantial. Section 89 of the Act permits a landlord to apply to the Board for an order requiring a tenant to pay reasonable costs that the landlord has incurred or will incur for the repair of or replacement of damaged property if the tenant wilfully or negligently causes undue damage to the rental unit.
30. The language of both s.89 and s.62(1) requires damage to be undue. The photos provided by the Landlord do show some damage. However, I am not satisfied that the damage is undue.
31. Accordingly, this part of the Landlord's application is dismissed.

Blocking of Driveway/Access

32. The Landlord operates a farm on the rental property. The Landlord stores farm equipment in a building on the farmland. There is a shared driveway on the property both parties have access to.
33. The Landlord provided photos to the Board showing the Tenants parked their vehicles in a way that obstructs the Landlord's access to the farmland on the property. I accept the Landlord's evidence in this regard. I find the Tenants substantially interfered with the Landlord's right to access the farm located on the rental property.

Removal of Surveyor Locates

34. The Landlord's allege the Tenants removed surveyor markers placed on the rental property.
35. The Landlord provided pictures showing the markers were removed. The markers were outside on a farmland. It is a possibility that the surveyor markers were removed by a wild animal or anybody that uses the rental property for the Landlord's farming operation.

36. I find, the Landlord has not proven, on a balance of probabilities, the surveyor markers were removed by either or the Tenants. This portion of the Landlord's application is dismissed.

Occupation of Non-Rental Property

37. Pursuant to the tenancy agreement, the Tenants are permitted to use the small garage on the property. However, the adjoining garage is not part of the tenancy agreement.
38. At the hearing, the Tenant, Daniel Grimbsy, acknowledged he has stored belongings in the adjoining garage. He further acknowledged this is contrary to the tenancy agreement, however he offered the Landlord an additional \$50.00 a month for use of the additional garage.
39. Based on the Tenant's acknowledgement, I find the Tenants substantially interfered with the Landlord's right to use the second garage contrary to the tenancy agreement.

Remedies

40. I have found several instances where the Tenants have substantially interfered with the Landlord's lawful rights, privilege, or interest in the rental unit. On that basis the Landlord seeks to terminate the tenancy.
41. 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.
42. While there are several instances of substantial interference, I find the circumstances warrant a conditional order, rather than a termination of tenancy. The Tenants' conduct is easily correctable. I find the Tenant, Daniel Grimbsy, testified in an honest and forthright manner. This leads me to believe the Tenants are serious about preserving the tenancy and will comply with the conditions set out below.
43. I find it appropriate to order the Tenants to pay the Landlords for use of the property that was not part of the tenancy agreement. The Landlord's suggest the value of the rental space used by the Tenants is \$300.00/month.
44. I was provided no evidence at the hearing in support of this valuation and find it to be a bit high.
45. On the other hand, the Tenants were willing to pay \$50.00/month for the additional storage space. I find this valuation to be a bit low.
46. I find \$100.00/month to be a reasonable value for the additional storage space the utilized contrary to the tenancy agreement.

47. With respect to the lost of farming revenue, I do not find the Tenants' substantial interference lead to any revenue lost by the Landlord. I do not find an award to compensate the Landlord for her loss to be appropriate in this situation.
48. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
49. 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 grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

It is ordered that:

1. The Landlords' application for termination of the tenancy under this L2 application is denied if the Tenants comply with the following terms:
 - a) The Tenants provide the Landlords proof they have purchased contents insurance for the rental period no later than July 27, 2023, and no later than the 1st day of July each year after thereafter.
 - b) The Tenants shall refrain from any conduct or behaviour that would jeopardize the Landlord's ability to insure the rental unit.
 - c) The Tenants shall refrain from using the fire pit on the rental unit in way that violates Norfolk County Bylaw 2016-72.
 - d) If the Tenants have not already done so, the Tenants shall provide the Landlord a copy of key(s) to all locking systems in the rental unit on or before July 27, 2023.
 - e) The Tenants shall not alter any locking systems in the rental unit without the consent of the Landlord.
 - f) The Tenants shall not block or impede the Landlord's access to anywhere on the property of the rental unit the Landlord has a lawful right to occupy.
 - g) The Tenants shall remove all their belongings from anywhere on the property of the rental unit they do not have lawful right to occupy on, or before, August 31, 2023.

2. If the Tenants fails to comply with paragraph 1 of this order, the Landlord may, without notice to the Tenant and within 30 days of the breach, apply to the Board pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenants.
3. The Tenants shall pay \$3,000.00 to the Landlord for the reasonable cost of storing their belongings in the second garage for the period October 1, 2020, to April 30, 2023.
4. The Tenants shall pay to the Landlord the amount set out in paragraph 1 in accordance with the following schedule:

Date Payment Due	Payment Amount
The 15 th day of each month beginning August 15, 2023, and ending July 15, 2024	\$250.00

5. If the Tenants fail to make any one of the payments in accordance with paragraph 4 of this order, the outstanding balance to be paid by the Tenants to the Landlord pursuant to this order shall become immediately due and owing and the Landlord may, without notice to the Tenants, apply to the LTB within 30 days of the Tenants' breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenants
6. The Tenants shall pay to the Landlord \$186.00 for the cost of filing the application.
7. If the Tenants do not pay the Landlord the full amount owing under paragraph 6 of this order on or before July 31, 2023, the Tenants will start to owe interest. This will be simple interest calculated from August 1, 2023, at 6.00% annually on the balance outstanding.

July 20, 2023
Date Issued

Bryan Delorenzi
Member, Landlord and Tenants Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.