



**Order under Section 69 / 88.2
Residential Tenancies Act, 2006**

Citation: Patel v Yussuf, 2023 ONLTB 46077

Date: 2023-07-17

File Number: LTB-L-002282-22

In the matter of: Basement, 262 VELLORE PARK AV
WOODBIDGE ON L4H0C4

Between: Faruk Patel Landlord

And

Abdulhakim Yussuf Awil Tenants
Weheliye

Faruk Patel (the 'Landlord') applied for an order to terminate the tenancy and evict Abdulhakim Yussuf and Awil Weheliye (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 tenant.

The Landlord also applied for an order requiring the Tenants to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenants' failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

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

The Landlord, the Landlord's legal representative, Michael Geldert, and both Tenants attended the hearing. The Tenants spoke with Tenant Duty Counsel on the hearing day.

Determinations:

1. The Tenants were in possession of the rental unit on the day the application was filed and the Tenants were still in possession of the rental unit as of the hearing date.
2. The Landlord served the Tenants with 2 identical N5 Notices of Termination. This application is based on the second N5 Notice. Both notices have a termination date of December 31, 2021.

3. The Landlord cannot rely on the second N5 Notice on the basis that it is identical to the first one. However, since the termination date in the first N5 Notice is still within 30 days of the date the Landlord filed their application, the Landlord can proceed on the first notice. Accordingly, the application is amended to reflect that this is based on a first N5 Notice of Termination.
4. The Landlord served the Tenants the notice in their mailbox on November 21, 2021. Since the termination date in the notice is December 31, 2021, the notice meets the statutory 20 days notice for termination.
5. Also, since this is a first N5 Notice, the Tenants have the opportunity to void the notice by correcting the behaviour outlined in the notice. For the purpose of the notice, the voiding period is from November 22, 2021 to November 29, 2021.
6. The Landlord lists 6 issues that substantially interfere with their lawful right, privilege or interest of the rental unit and residential complex on their notice as follows:
 1. Smoking Marijuana
 2. Causing disturbance and inconvenience to neighbour
 3. Utilities balance outstanding
 4. Suspicious criminal activity
 5. Constant banging in the basement
 6. Son's Behaviour
7. The rental unit is located in a house with the Landlord and their family living upstairs and the Tenants live in the basement unit.
8. At the hearing, the Landlord confirmed that the Tenant had voided issues 2, 4, 5 and 6. The only issues that were not corrected in the voiding period are the marijuana smoking in the rental unit and the unpaid utilities.
9. The Tenants do not dispute the outstanding utility amounts. The tenancy agreement provides that the Tenants are responsible to pay the Landlord the difference in utilities each month that results in their usage being more than \$175.00. At the hearing, the parties agreed that the total amount of unpaid utilities for Enbridge Gas and Alectra Utilities is \$785.49 for the period ending November 30, 2021.
10. Since the Tenants did not dispute the utility costs, I find that the Tenants are in breach of contract for not paying the utilities and that this substantially interferes with the Landlords lawful right as per their contract.
11. The issue regarding the marijuana smoking inside the unit was contested at the hearing.
12. The Landlord indicated that they smelled marijuana smoke coming from the Tenants unit during the voiding period in addition to the dates listed in their N5 Notice. The last date that the Landlord notes marijuana smoke as being an issue in the notice is September 16, 2021. Additionally, the Landlord testified that on November 24, 2021 at 4:57pm his wife

sent him a Whatsapp message that she could again smell marijuana smoke inside the house. This incident is within the voiding period on the N5 Notice.

13. The Landlord testified that he has 3 young children and there is specifically a no smoking clause in the lease that they expected the Tenants to respect. Within the first 3 days after the tenancy started in December of 2020 the Landlord witnessed the Tenants son smoking marijuana inside the unit when he went to investigate an issue with the internet. There were 2 young adults including the Tenant Awil and Ducale Yussuf. The Landlord expressed his concerns about the smoking to the Tenants. The Landlord suspects that Ducale smokes in the rental unit when his parents are not at home. Most recently, the Landlord received a message from his wife on January 18, 2023 that they could smell marijuana smoke coming from the Tenants unit. Since December of 2020 the Landlord attested that he had not actually witnessed the Tenants or their occupants smoking inside, but they assert that it still smells like it.
14. The Tenants dispute ever smoking inside the rental unit since they also have children that live in the rental unit and it would be a risk to their health to do so. The Tenants admit to smoking marijuana outside the rental unit and suspect that the smell must be coming in from outside.
15. The Landlord bears the onus to prove on a balance of probabilities the allegations in their notice.
16. With respect to the issue of the marijuana smoke inside the unit, I am unable to determine that the Tenants smoke inside considering the Landlord has not witnessed the Tenants smoking inside since they first spoke to them about it in December of 2020. More likely than not, the Tenants son is smoking marijuana outside and the smell is coming inside. However, I still find that the marijuana smoking at the residential complex is substantially interfering with the Landlord on the basis that it is causing their unit upstairs to smell like marijuana as they testified it still does up to a few days before the hearing.
17. In summary, I find that the Tenants have substantially interfered with the Landlord with respect to their unpaid utility accounts and on the basis that the Tenants son continues to smoke marijuana at the residential complex which continues to disturb the Landlord and their family.

Section 83 Relief

18. This is a relatively short tenancy and it appears as though conflict arose at the outset of the tenancy regarding various issues with the Tenants noise, guests, smoking of marijuana, not paying utilities and suspicious behaviour of their occupants. It would appear that Awil was responsible for much of the issues and they are not currently residing in the rental unit. This has reduced the interference for the Landlord.
19. As of the hearing, the Tenant Abdulhakim, is unemployed and in receipt of unemployment benefits. The Tenants spouse is on disability due to stress and mental health issues. The Landlords child has special needs from birth that requires special care and if the Tenants and their family are evicted, they would struggle financially and suffer from additional stress.

20. Eviction is a method of last resort if there is no other way to preserve the tenancy. On this basis, I find it appropriate under the circumstances to order that the Tenants follow conditions in order to preserve the tenancy. This will include paying the Landlord back for the outstanding utilities and also to ensure that the Landlord and their family are not bothered by the smell of marijuana coming into their unit.
21. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
22. The Tenants failed to pay the Enbridge Gas and Alectra Utilities that they were required to pay under the terms of the tenancy agreement in the amount of \$785.49 for the period ending November 30, 2021.
23. 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 tenancy between the Landlord and the Tenants continue if the Tenants meet the conditions set out below.
 - a) The Tenants shall pay to the Landlord \$785.49 for the unpaid utilities for the period ending November 30, 2021 by paying \$75.00 per month on or by the last day of each month until the balance is paid in full and starting July 31, 2023; and
 - b) The Tenants shall not smoke marijuana or any other substance which may interfere with the Landlord inside the rental unit at any time and shall not smoke outside any open window or door at the residential complex for the duration of the tenancy.
2. If the Tenants fail to comply with the conditions set out in paragraph 1 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenants. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenants.
3. The Tenants shall also pay to the Landlord \$186.00 for the cost of filing the application.
4. If the Tenants do not pay the Landlord the full amount owing for the filing fee on or before August 15, 2023, the Tenants will start to owe interest. This will be simple interest calculated from July 8, 2023 at 6.00% annually on the balance outstanding.

July 17, 2023

Date Issued

Terri van Huisstede

Member, Landlord and Tenant Board

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