



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

**Citation:** Bin-zaman v Alalibo, 2023 ONLTB 49668

**Date:** 2023-07-12

**File Number:** LTB-L-028995-23

**In the matter of:** Basement, 19 CHESAPEAKE AVE SCARBOROUGH  
ON M1L1T1

**Between:** Sheikh Bin-zaman Landlord

**And**

Inyingi Eniola Alalibo Tenant Miebaka Afolabi Alalibo

Sheikh Bin-zaman (the 'Landlord') applied for an order to terminate the tenancy and evict Inyingi eniola Alalibo and Miebaka afolabi Alalibo (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;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the building has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord in a building that has three or fewer residential units and the Landlord resides in the building.

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

Sheikh Bin-zaman (the 'Landlord') applied for an order requiring Inyingi eniola Alalibo and Miebaka afolabi Alalibo (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 July 4, 2023.

The Landlord and the Tenant, Miebaka Afolabi Alalibo attended the hearing. The Landlord's spouse, Rozina Molla attended as witness for the Landlord.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated on July 23, 2023.
2. On April 8, 2023, the Landlord gave the Tenant an N7 notice of termination effective on May 31, 2023. The notice of termination contains the following allegations: on March 19 and 30, 2023, there was noise disturbances between 11:00 PM and 5:00 AM in the morning that included loud talking, slamming door, furniture moving, TV, and or music; On March 11 and 30, 2023 and April 3, 2023, the Tenants cooked for hours and there was food odor that was strong; On March 19, 2023, the Tenants did 5 loads of laundry rather than 3 loads as per the tenancy agreement; On March 11, 2023 the unit was unclean; On March 11 and 28, 2023, the fire alarm was removed; On March 28 there was excessive use of the dishwasher and there's excessive water consumption.

**Serious Impairment of Safety**

3. On March 22, 2023 and April 3 and 8, 2023, the Tenants tampered with the fire alarm by removing the device from the ceiling which has the potential to seriously impaired the safety of the Landlord and his family. This conduct occurred in the residential complex. The Tenant testified it's the other Tenant, his sister who removes the alarm when cooking to avoid setting off the alarm/siren. The Landlord provided photographs to support his claim which were not disputed. One photograph included a paper that was inserted behind the battery which the Tenant stated was unintentional.

**Substantial Interference**

4. The building has three or fewer residential units.
5. The Landlord lives in the building.

**Noise Disturbances:**

6. The Tenant has caused noise disturbances in the rental unit on April 2 and 3, 2023 which was during the late hour of the night and early morning hours; on March 30, 2023 at 5:30 a.m. there was noise that emanated from the Tenant's kitchen; On March 28, 2023, at 6:30 for four and five hours there was continuous ongoing noise when cooking; On March 27, 2023, there was loud TV heard; on March 26, 2023 there was continuous use of the dishwasher from 9:50 p.m. to 4:00 a.m. causing a noise; on March 31, 2023 at 6:30 a.m. there was slamming doors.

7. This conduct has substantially interfered with the Landlord's reasonable enjoyment of the building because the noise interrupted his sleep and quiet enjoyment. The Landlord and his witness, however, referred to noise that would be associated for the most part with normal daily activity and termination of the tenancy would not be appropriate given that there appears to be little to no noise barrier between the basement and upper units. I draw this conclusion based on testimony from the Landlord's witness who indicated she can hear the door shut in the basement and when the washroom is in use. The Landlord has not provided evidence as to what actions he's taken to minimize the noise transfer between the two units. It's reasonable to expect some level noise in a multi-unit dwelling.
8. The Landlord describes the odor from the Tenant's cooking as excessive because the Tenants cook for 4 hours at a time and the smell emanates into the the Landlord's unit. The smell according to the Landlord and his witness is that the odor is very strong that he also received complaint from his neighbour. The Tenant denies operating a catering business in the unit. The Tenant also stated that they cook 1 to 3 times a week and admits to bulking cooking to avoid using the stove, but food preparation is for multiple days. The odor is associated with normal daily activity and I do not find that evicting the Tenants for using the stove is reasonable.
9. The Landlord presented photographs that showed the stove-top, with excessive food stains, photographs of the dirty fridge being left open because of excessive food storage and ceiling stains from cooking. The Act requires the Tenant to maintain the unit in a state of reasonable cleanliness and the photographs of the stove and a small section of the fridge that is uncleaned is a small portion of the unit and not enough to establish that the unit was maintained in an unreasonable state of cleanliness.
10. The Tenant does not dispute then on occasion he and the other Tenant have used the laundry room in excess of three loads per week which is contrary to the tenancy agreement. The Landlord did not establish that using the washing machine to do laundry five times versus three times a week substantially interferes with his lawful interests.
11. The Landlord presented a graph based on water usage from February 2022 to May 2023. For the period of February to May 2022 usage was 81 cubic meters, January 2022 to September 2022 the usage was 115 cubic meters; October 2022 to January 2023 usage was 99 cubic meters; and February to May 2023 the usage was 226 cubic meters. The Tenant did not challenge the Landlord's evidence that water consumption is high. Although the Landlord did not provide the actual billing, it is reasonable to conclude that the higher the usage the higher the cost. The Landlord provided comparisons for the period before the Tenant moved in (pre-October 2022) and after the Tenant moved in. I find the water consumption is significantly greater after the Tenant moved into the unit. Since the Landlord is responsible for paying the utility of water, I find the Tenants' conduct has substantially interferes with a lawful right, privilege or interest of the Landlord.
12. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Compensation for damages:

13. There was no evidence led by the Landlord about alleged physical damage to the rental unit and therefore the damage claim was not considered.

Section 83 considerations:

14. 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.
15. The Landlord's evidence includes photographs taken on May 27, 2023 and in June 2023 which supports a finding that the Tenants continue to tamper with the fire alarm and also supports a finding that the N7 Notice was insufficient to motivate the Tenants to change their conduct. I do not find it likely that the behaviour will change if a conditional order is issued. Furthermore, although the Tenant transfers the blame to his sister, the joint Tenant, she did not attend to provide assurances that this conduct will stop. Given the state of the stove, and the fact that the fridge is left open because of an abundance of food suggests there's a lot of cooking taking place in the unit and the importance of untampered safety device is necessary that will ensure the safety of other people living in the complex.
16. I recognize that the tendency started less than a year ago but based on the submissions made I do not believe that this tendency can be preserved with a conditional order. The Tenant indicated he'd speak to his sister to emphasize the seriousness associated with disconnecting the alarm which should have been a conversation to have had prior to this hearing.
17. There were also no submissions made about reducing water consumption in the rental unit.

**It is ordered that:**

1. The tenancy between the Landlord and Tenants is terminated on July 31, 2023. The tenants must move out of the rental unit on or before July 23, 2023.
2. The Tenants shall pay to the Landlord \$186.00 for the cost of filing the application.
3. If the Tenants do not pay the Landlord the full amount owing 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.
4. If the unit is not vacated on or before July 31, 2023, then starting August 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
5. 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 1, 2023.

**July 12, 2023**

**Date Issued**

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**Sandra Macchione**

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 January 31, 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.