



**Order under Section 69 and 29
Residential Tenancies Act, 2006**

Citation: Roele v Sexton, 2023 ONLTB 46090

Date: 2023-07-10 **File Numbers:** LTB-L-012494-22, LTB-L-072291-22, LTB-T-072255-22

In the matter of: Unit 4, 255 Talbot Street North Essex
Ontario N8M2E2

Between: Margaretha Roele and Ben Minbashian Landlord

And

Carolann Dannis and Curt Sexton Tenants

Ben Minbashian and Margaretha Roele (the 'Landlord') applied for an order to terminate the tenancy and evict Carolann Dannis and Curt Sexton (the 'Tenants') because the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year ('N12 based L2 application').

The Landlord also applied for an order to terminate the tenancy and evict the Tenants because the Tenants substantially interfered with the reasonable enjoyment of the residential complex or another lawful right, privilege or interest of the Landlord or another tenant ('N5 based L2 application').

The Tenants applied for an order determining that the Landlord harassed, obstructed, coerced, threatened or interfered with the Tenants ('T2 application') and the Tenants applied for a reduction of the rent charged for the rental unit due to a discontinuance in services or facilities provided in respect of the rental unit or the residential complex ('T3 application').

The applications were heard over two days by videoconference on March 15, 2023 and May 5, 2023.

Both Landlords, their Representative Trever Scheib, both Tenants, and their Representative Jane Scharf attended both hearing days.

Determinations:

1. In regards to the Landlord's N12 based L2 application the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated as of September 30, 2023
2. The Landlord's N5 based L2 application is dismissed.
3. Both Tenant applications are dismissed.
4. The Tenants were in possession of the rental unit on the date the application was filed.
5. I will address the Landlord's N5 based application, then the Tenants' applications which primarily allege that the Landlord's N5s were harassment, then the Landlords' N12 based application. The reason for this is because that is the chronological order the events occurred in and the Tenants requested that I consider all evidence on the N5 based application and their applications before deciding whether the Landlord sincerely intends to occupy the rental unit.

Tenants' Evidence

6. There was some delay in the Tenants' evidence being added to the file as it was mailed to the Board. Prior to the second hearing date the Landlord had a copy of the Tenants' evidence, but the Board did not. The hearing proceeded with the Tenants sharing the evidence from their screen. The Tenants' evidence is now in the Board's file and has been reviewed prior to writing this order.

N5 Based L2 Application

The Notices of Termination

7. On July 20, 2020, the Landlord gave the Tenants a first, voidable N5 notice of termination. It was deemed served on July 25, 2020. The date of termination is September 1, 2020. The notice alleges that the Tenants have substantially interfered with another tenant's reasonable enjoyment of the residential complex or the Landlord's lawful right, privilege, or interest. The notice states:

“July 28, 2020 the flood light that is wired down from your second floor window where your A/C is located must be removed. Please note, you can not install anything outside your unit without prior consent by the landlord”.

8. The flood light was not removed within the 7-day voiding period, however it has since been removed.
9. On January 6, 2021, the Landlord gave the Tenant a second N5 notice of termination with a termination date of February 1, 2021. The notice of termination contains the following allegations:

1. “January 2, 2021 - The camera in front of your unit has to be removed. This is the third time that we are issuing an N5 relating to placement of cameras outside your unit without our consent.
 2. January 2, 2021 -The tenant in unit 5 had left due to your ongoing harassment and intimidation that we have flagged you as not being acceptable behaviour.”
10. I find that the second claim on the second notice does not contain sufficient particulars as it mentions “harassment” and “intimidation” but provides no details. Section 43(2) of the *Residential Tenancies Act, 2006* (‘the Act’) says that a notice of termination shall set out the reasons and details respecting the termination.
11. The need for a notice to contain “reasons and details” was addressed by the Divisional Court decision *Ball v Metro Capital Property, [2002] O.J. No. 5931* (‘Ball’). Ball stands for the proposition that the kinds of particulars that should be contained in a notice include “dates and times of the alleged offensive conduct together with a detailed description of the alleged conduct engaged in by the tenant”.
12. As the second claim on the second N5 did not contain sufficient particulars the only claim that proceeded to a hearing is the first claim on the second N5, namely that the Tenants have installed a camera in front of their rental unit.

Evidence and Analysis

13. A photograph of the camera described on the second N5 notice was entered into evidence. This camera is a small doorbell camera attached to the Tenants’ front door. The Landlord M.B testified that google informed her that type of camera has voice recording capability. The landlord was not sure of the range on the camera.
14. I do not find that the Tenants’ doorbell camera substantially interferences with the reasonable enjoyment of other tenants or the Landlord’s lawful right, privilege, or interest. The doorbell camera only has a view of what is directly outside the Tenant’s rental unit, which is an outdoor public area. The Landlord was unsure of the range of the camera and had no definitive proof that it could record voices. As such I do not find that the Tenant’s doorbell camera constitutes substantial interference.

T2 Application

15. The Tenants allege that the Landlord harassed them by:
1. Serving four meritless and inaccurate N5 notices of termination;
 2. Not properly addressing a shooting incident at the residential complex;
 3. Not properly addressing a death threat the Tenants reported receiving from a neighbouring tenant.

16. The Tenants also allege that the Landlord harassed them by not equally enforcing new parking rules at the residential complex and by sending the Tenants a photo of their vehicle and insinuating that the Tenants did not know how to park. However, these incidents occurred January 25, 2020 and March 11, 2020. Pursuant to section 29(2) of the Act no application regarding harassment can be made more than one year after the alleged conduct giving rise to the application occurred. The Tenant's application was filed July 15, 2021, and as such the parking incidents are outside the timeframe of what can be considered on the application. The alleged incidents are also prior to the suspension of limitation periods that resulted from the Covid-19 pandemic.
17. I note that the first N5 served by the Landlord was in 2019 and is also outside of what can be considered on the Tenant's application as harassment. However, I will still consider it as part of the narrative of the Landlord's actions, but no breach of the Act nor remedy will be awarded to the Tenant for anything outside the 1-year limitation period.

The N5 Notices as Harassment

18. The Tenants allege that the four N5s served by the Landlord were all meritless and based on falsehoods. The Tenant Curt Sexton ('C.S') testified that there were no complaints about the Tenants' cameras or the Tenants' behaviour prior to the new Landlords purchasing the property in 2017.
19. The Tenants allege that the N5 notices are false and meritless in the following ways:
 1. First, the first N5 served upon the Tenants (which did not result in an application to the Board) mentions a structure that the Tenants built which is "restricting everyone's access to the backyard, which is a common area". The Tenants introduced into evidence photographs which show an unblocked walkway.
 2. Second, the N5 which mentions a camera on July 20, 2020 was wrong as the Tenants' did not have a camera in the location described, but rather the object described is a floodlight.
 3. Third, the Tenants cameras did not substantially interfere with anyone. They have also since been removed.
 4. Fourth, the Tenants did not harassment or intimate their neighbours.
20. I do not find on a balance of probabilities that the Landlord's actions constitute harassment for the following reasons.
21. First, the Landlords N5 notices were served in response to complaints from neighbouring tenants.

22. The first N5 from August 2019 and was issued in direct response to a complaint from neighbour tenant Henry. On July 31, 2019 Henry complained that the camera on the Tenants' gazebo invaded Henry's privacy as it looked onto his property.
23. The N5 from July 20, 2020 was issued in response to a complaint from Henry that the Tenants installed a floodlight that shines light directly into his bedroom and had installed more cameras he felt invaded his privacy.
24. The N5 notice from January 6, 2021 that stated the Tenants had harassed and intimidated the tenant in unit 5 was in response to the following complaint from Henry in which he states that he is vacating his rental unit "because of intimidation from my neighbour, sextons in unit 3". Henry says:

"the sextons have falsely accused me of scratching their car, threatening their life, bringing young girls to my unit and kicking them out in the middle of the night. They have left dead mice outside my unit, called the police on me, intercepted my mail, dumped trash in my mailbox and stared me down on frequent basis. As a tenant, I have the right to enjoy my home and feel safe. I can not accept the current situation. I have been wearing a body camera for months now and I can't continue to do so".
25. It was not clear from the Landlord's evidence which specific complaint was the basis of the most recent N5 notice which mentioned the doorbell camera, but there had been previous complaints about the Tenants' various cameras from neighbours Henry and Carol.
26. Second, while I dismissed the Landlord's N5 based application the Landlords were self represented when they filed their N5 notices and the only claim which contained sufficient particulars was the doorbell camera. As such, that was the only claim considered and I determined that the doorbell camera did not rise to the level of substantial interference.
27. Third, the Landlord's N5 notices were served when the Landlord felt that they had sufficient evidence to file a notice. The Landlord M.B testified that "before I take any action, I always try to get confirmation from someone else that there is indeed a problem". The notices were served in regard to complaints about specific cameras in specific locations. M.B testified that she also received complaints from other neighbours that they felt they were being listened to with audio recording devices, but there was no proof, or official complaints, so no action was taken on those complaints.
28. Fourth, the Landlord served the notices to fulfill their duty as landlord which includes ensuring that none of their tenants' reasonable enjoyment is substantially interfered with. The Landlords had to determine how best to navigate the various complaints they were receiving from their tenants and choose to act on the claims they felt were substantiated. The Landlord was exercising their rights and duties under the Act.
29. Fifth, I do not find the factually inaccurate statements on the notices to constitute harassment. While I agree with the Tenants that the structure mentioned on one of the notices does not fully block the walkway, it only leaves a fairly small path, and the structure itself is quite large and overbearing on the walkway. As such the Landlord's description that

the structure “restricts everyone access to the backyard” is not unreasonable. Additionally, the N5 notice which stated there was a camera which turned out to be a flood light did not result in an application to the Board and another N5 was issued which accurately described the object as of floodlight.

30. For those reasons I do not find the notices of termination constitute harassment.

Not Properly Addressing Allegations of Criminal Activity as Harassment

31. On June 28, 2020 the Tenants reported to the Landlord that there were shots fired from their neighbour Henry’s window (at the hearing the Tenant C.S clarified that it was an airsoft gun that fired the shots). On July 11, 2020 the Tenants reported to the Landlord that they have received a death threat from Henry. The Tenants allege that the Landlord harassed them by not taking these reports seriously and by insinuating that the Tenants were making false reports.
32. While the Landlords did insinuate to the Tenants in a text message that they believed the Tenants were making fictitious reports, I do not find that the Landlord harassed the Tenants in their handling of the reports because the Landlord did take reasonable steps to follow up on the reports of their Tenants.
33. The Landlord M.R called the police on June 28, 2020 about the shooting incident, left a voicemail, and did not hear back. The Landlord called the police again on July 11, 2020 and learned that the police had been called to the property a number of times but that no charges were laid.
34. M.R testified that after the report of a shooting, and other reports from tenants, the Landlord installed a camera on Henry’s property that the Landlord could access. The purpose of the camera was for security of all tenants. M.R testified that Henry’s unit was chosen as the location for the camera because it could be installed there to look at common areas and not invade any tenant’s privacy.
35. In response to the Tenants complaint about death threats from Henry, the Landlord spoke to Henry who denied it. The Landlord told the Tenants to file a report with the police. No criminal charges were laid against Henry.
36. M.R testified had there been any supporting evidence regarding wrongdoing by Henry that the Landlord would have served an N5 against him.
37. As the Landlord did take reasonable steps to address the Tenants’ complaints, I do not find that the Landlord harassed the Tenants.

T3 Application

38. The Tenants filed a T3 application on July 15, 2021 indicating that the Landlord discontinued the use of their parking spot on January 25, 2020. Pursuant to section 130(5) of the Act no application can be made more than one year after a reduction or

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discontinuance in the service or facility occurred. The T3 application is dismissed for not being filed within the limitation period.

N12 Based L2 Application

39. On March 1, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of April 30, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by Ben Minbashian ('B.M').
40. B.M testified that he intends to reside in the rental unit for at least one year. He testified that he separated from his wife (the other landlord) in February 2022 and the Landlords signed a separation agreement that indicates they will start living separately and apart on May 8, 2022.
41. While the Landlords own other rental units in the residential complex, B.M testified that the rental unit in question is specifically desirable for him because it is the most private and secluded unit which suits his needs.
42. The Tenants submit that the Landlord does not in good faith intend to move into the rental unit for the following reasons. First, the Tenants are paying below market rent and the Landlord may be seeking to rent out the unit for more money. Second there is a more recently renovated unit in the residential complex and the Landlord should move in there. Third, the Landlord just wants the Tenants out because of the disputes that occurred between the Tenants and their neighbours/landlords that gave rise to the N5 notices and the Tenants' applications.
43. I find on a balance of probabilities that the Landlord in good faith requires possession of the rental unit for the purpose of the Landlord's B.M residential occupation for a period of at least one year for the following reasons.
44. First, I found the Landlord B.M credible in his testimony that he intends to move into the rental unit as it was offered in a forthright manner and withstood cross examination well.
45. Second, I also found B.M and M.R credible in their testimony that they have separated and that is why B.M needs somewhere new to live.
46. Third, that a rental unit can be rented for a higher rent is true in any rental market with rising rents. Absent some evidence that the Landlord's true intention is to re-rent the unit, the costs of the market alone do not satisfy me that the Landlord is being insincere in their stated intention.
47. Fourth, when deciding "good faith" I must consider whether the landlord has a genuine intention to occupy the premises. Whether the landlord's plan is reasonable is not the test: *Feeney v. Noble*, 1994 CanLII 10538 (ON SC). B.M testified that he does not require a renovated unit and specifically wants the rental because of the privacy it offers.
48. Fifth, that the parties had conflict does not satisfy that the Landlords are lying about their stated intention when the Landlord has put forth credible evidence that B.M does in fact

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 intend to move into the rental unit. Again, the test is whether the Landlord has a genuine intention to occupy. I also note that the N12 notice was served over a year after the last N5 notice was served and the period in which all the conflict occurred. Board delays are why these applications were heard together. Additionally, the separation between the Landlords occurred post the N5 based L2 application being filed and before N12 notice being served. It is more likely than not that B.M will move into the rental unit because he separated from his wife and needs somewhere to live, rather than the N12 based application being a guise to remove the Tenants.

Compensation and Rent Deposit

49. The Landlord has compensated the Tenants an amount equal to one month's rent by April 30, 2022. The Tenants were initially sent a cheque, but it was returned. The Tenants were successfully compensated by e-transfer on April 5, 2022.
50. There is no last month's rent deposit.

Relief from eviction

Exercising Their Legal Rights

51. The Tenants submit that the application must be dismissed as it was filed in retaliation for the Tenants exercising their legal rights by filing their application and by fighting back against the Landlord's and their neighbour's harassment.
52. For the application to be dismissed pursuant to section 83(3)(c) I must be satisfied that the Tenants exercising their legal rights is the sole or primary reason that the application is being brought: *MacNiel v. 976445 Ontario LTD.*, [2005] O.J. No. 6362 9Ont.Div.Ct.) leave to appeal to C.A refused (September 27, 2005), *Puterrbough v. Canada (Public Works and Government Services)*, [2007] O.J No. 748 (Ont. Div. Ct.).
53. I am not satisfied that the reason the N12 based application was filed is because the Tenants exercised their legal rights. The Tenants' applications were filed July 15, 2021 and the events described are from that time period or earlier. The Landlords served the N12 notice on March 1, 2022, nearly 8 months later. The notice was also served in close proximity to the separation of the Landlords. As such, I find that the reason the Landlords served the N12 notice is because B.M intends to occupy the rental unit, not because the Tenants exercised their legal rights.

Delay

54. The Tenants have lived in the rental unit for 23 years and their community supports including their church and family are close by.
55. The Landlord seeks an eviction within 30 days of this order as B.M has been waiting a significant period of time to move in to the rental unit.

56. 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 postpone the eviction until September 30, 2023, 2023 pursuant to subsection 83(1)(b) of the Act. The Tenants have lived in the rental unit for a significant period of time and will require time to find new living accommodations. However, I have declined to postpone the eviction any further than September 30, 2023 as the Landlord has been waiting a significant period of time to move in.

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 September 30, 2023.
2. If the unit is not vacated on or before September 30, 2023, then starting October 1, 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 October 1, 2023.
4. The Tenants' applications are dismissed.

July 10, 2023

Date Issued

Amanda Kovats

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 April 1, 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.