



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

Citation: 2742827 ONTARIO INC v Foster, 2023 ONLTB 44314

Date: 2023-06-20

File Number: LTB-L-024294-23

In the matter of: 5, 25 ORCHARD HEIGHTS DR
CHATHAM ON N7M3G5

Between: 2742827 ONTARIO INC
JANSSEN PROPERTY MANAGEMENT

Landlord

And

David Foster

Tenant

2742827 ONTARIO INC and JANSSEN PROPERTY MANAGEMENT (the 'Landlord') applied for an order to terminate the tenancy and evict David Foster (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or someone the Tenant 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 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 Landlord also applied for an order requiring David Foster (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 June 7, 2023.

Only the Landlord's legal representative, Audrey Skinner, and the Landlord's Agent, Leah Smith, attended the hearing.

The Tenant was not present or represented at the hearing throughout the entire hearing block, although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N7 Notice of Termination

3. On March 21, 2023, the Landlord gave the Tenant an N7 notice of termination, deemed served on March 26, 2023. The notice of termination contains the following allegations:
4. On February 27, 2023, during an inspection of the rental unit, the Tenant threatened the Landlord's legal representative and property management with a fire arm in the rental unit. Police was called and the Tenant was arrested and charged with threatening others with a weapon and pointing weapons with the intent to harm. The Tenant also disconnected the smoke alarms in the rental unit.
5. The Landlord's legal representative who was present during the inspection of the rental unit on February 27, 2023, gave evidence with respect to the allegations set out on the Notice of Termination.
6. Based on the uncontested evidence before me, I am satisfied that the Tenant has seriously impaired the safety of the Landlord's legal representative and the Landlord's property manager by pointing a fire arm at them and threatening to discharge the gun.

N5 Notices of Termination:

7. The Landlord gave the Tenant a Notice of Termination, Form N5 on October 7, 2022 because of extreme uncleanliness of the rental unit.
8. On March 21, 2023 the Landlord gave the Tenant a second N5 Notice of Termination. This Notice of Termination was deemed served on March 26, 2023. The Landlord's witness testified with respect to the allegations set out on the N5 Notice of Termination, which included extreme uncleanliness of the rental unit, such as plates or bowls with left over food sitting on furniture for extended periods of time; unsanitary floors and walls including feces stains; and garbage piled up throughout the rental unit. The garbage attracts vermin, and the noxious smells seep out of the rental unit and disturb the other tenants.
9. The Landlord also provided photographic evidence of the state of the rental unit.
10. The Landlord will incur over \$10,000.00 to bring the unit into a sanitary state. The Landlord, however, is not seeking this amount from the Tenant, who is on a limited income.
11. Based on the uncontested evidence before me, I am satisfied that the Tenant or an occupant of the rental unit or person permitted in the residential complex by the Tenant has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant and caused undue damage to the rental unit.

Relief from Eviction:

12. The Tenant has been residing in the rental unit for almost 10 years. He is 78 years old. The Landlord attempted to communicate with the Tenant and provide access to community resources; but the Tenant refused to communicate with the Landlord. In fact, he was hostile towards the Landlord's employees.

13. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Residential Tenancies Act, 2006 (the 'Act'), including the Landlord's efforts to assist the Tenant and the Tenant's refusal. However, considering the Tenant's age and the length of the tenancy, find that it would not be unfair to postpone the eviction until August 4, 2023 pursuant to subsection 83(1)(b) of the Act.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

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, August 4, 2023.
2. If the unit is not vacated on or before August 4, 2023, then starting August 5, 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 August 5, 2023. The Sheriff is requested to expedite the enforcement of this order.
4. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
5. The total amount the Tenant owes the Landlord is \$186.00.
6. If the Tenant does not pay the Landlord the full amount owing on or before August 4, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 5, 2023 at 6.00% annually on the balance outstanding.

July 25, 2023

Date Issued

Jana Rozehnal

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 February 4, 2023, 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.