



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

Citation: Top Of The Valley Apartments v Kershtein, 2023 ONLTB 40003

Date: 2023-06-02

File Number: LTB-L-039719-22

In the matter of: 604, 44 VALLEY WOODS RD
NORTH YORK ON M3A2R6

Between: Top Of The Valley Apartments Landlord

And

Ilya Kershtein Tenant

Top Of The Valley Apartments (the 'Landlord') applied for an order to terminate the tenancy and evict Ilya Kershtein (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.

This application was heard by videoconference on May 17, 2023.

The Landlord's Agent Estelle Epstein and the Landlord's Legal Representative David Ciobotaru and the Tenant Ilya Kershtein attended the hearing.

Determinations:

1. The Tenant was in possession of the rental unit on the date the application was filed.
2. On June 29, 2022, the Landlord gave the Tenant a voidable N5 notice of termination and it was deemed served on that date. The termination date in the notice is July 25, 2022.
3. The notice of termination contains several allegations between the period of May 6, 2021 and June 22, 2022. The dates of each allegation are particularized and they relate to poor housekeeping on the part of the Tenant as well as insufficient preparation for pest control treatment. The N5 notice also alleges a high level of cockroach activity throughout the time period. The dates inspections were done and the finding of those inspections are also particularized on the N5 notice.

4. The Landlord's property manager testified and confirmed multiple allegations contained on the N5 notice including the dates and the condition of the rental unit. The Landlord submitted photographs of the rental unit taken during some of the inspections and they do illustrate a rental unit that is in an untidy and unclean state. The Landlord's evidence was the continued conditions inside the rental unit significantly hindered their efforts in eliminating the cockroach infestation that was affecting other units in the building. Of particular note was the condition of the unit on April 7, 2022 where the unit was only 50-59% prepared for a pest control treatment. The Tenant did not dispute the allegations and admitted the conditions of the rental unit were quite bad at the time.
5. Based on the evidence presented at the hearing, I am satisfied on a balance of probabilities that the Tenant substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant in the residential complex. The Tenant clearly failed to comply with section 33 of the Act which requires a tenant to keep the rental unit in a state of general cleanliness. I am convinced this failure, when combined with a lack of preparation for pest control, contributed to a prolonged issue with cockroaches at the residential complex.
6. The Tenant had until July 6, 2022 to void the N5 notice. The Landlord's evidence was that on July 7, 2022 another inspection of the rental unit was conducted and the unit continued to be in a state of poor housekeeping, preventing an effective treatment for cockroaches. The Landlord submitted photographs taken on July 7, 2022 and they do depict the rental unit in an unclean and untidy state. The Tenant did not dispute this evidence. As a result, I find the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Section 83 Considerations

8. The Landlord sought an eviction of the Tenant. Their evidence was that since the N5 notice was served the issues persisted. On October 3, 2022 a plumber refused to do work inside the rental unit due to the cockroach infestation. The Landlord submitted photographs from an inspection of the unit taken on January 4, 2023. The photos show various amounts of clutter and garbage in different areas of the rental unit. The photos also show cupboards that are filthy and a bathroom that clearly had not been cleaned in some time.
9. The assistant property manager Marily Laguna testified that a month before the hearing, the Landlord received a complaint about a strong foul odour coming from the rental unit. She described it as the smell of a trash compactor room. She testified cockroaches were seen coming from the unit. Her evidence was the Tenant was notified the following day.
10. During cross examination, the Tenant asked Ms. Laguna if she had not been in the rental unit a week prior to the hearing and she agreed she had been. The Tenant asked Ms.

Laguna if there were any smells or issues at that time and Ms. Laguna stated that the Tenant had done some cleaning. The Tenant asked Ms. Laguna if the unit was clean and she replied no. Ms. Laguna did not mention this visit while giving her evidence in chief.

11. The Tenant testified he agrees there was a cockroach infestation. His evidence was the problem was 95% solved and there had not been a pest control treatment in some months. He estimated the last treatment was in February 2023. The Landlord submitted no evidence that recent pest treatments were required.
12. The Tenant also testified he had cleaned up the rental unit and that now everything is put away. He strongly disagreed with Ms. Laguna's assertions that the unit had not been cleaned up the week prior to the hearing when she visited. Since Ms. Laguna did not mention this visit in her evidence in chief and did acknowledge the Tenant had done some cleaning, I found the Tenant's evidence on the current state of the unit more reliable. Additionally, the most recent photos tendered were from January 4, 2023, over 4 months before the hearing date.
13. The Tenant testified he has lived in the rental unit for 13 years and wants to stay. If he were to be evicted, he had no idea how long he would need to find alternative living arrangements.
14. While there is little doubt it took the Tenant far longer than it should have to address the issues contained on the N5 notice, I find it is more likely than not the Tenant has made great strides in cleaning the rental unit and putting it in the state of cleanliness it should be in. I believe the Tenant now has a firm understanding of his responsibilities.
15. 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. As termination of the tenancy is a remedy of last resort, I find it most fair to afford the Tenant an opportunity to maintain the tenancy. As such, a conditional order will issue.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
2. For a period of one year from the date of this order, the Tenant shall maintain the rental unit in a clean and tidy state in accordance with section 33 of the *Residential Tenancies Act, 2006* (the Act). For clarity, section 33 of the Act reads as follows:

The tenant is responsible for ordinary cleanliness of the rental unit, except to the extent that the tenancy agreement requires the landlord to clean it.

3. For a period of one year from the date of this order, the Tenant shall abide by and follow any and all instructions given to him by the Landlord in relation to preparation for pest control.
4. For a period of one year from the date of this order, if the Landlord has provided the Tenant with 24 hours written notice of entry for the purposes of pest control treatment, the Tenant shall not interfere or hinder the carrying out of the treatment.
5. For a period of one year from the date of this order, if the Landlord gives the Tenant 24 hours written notice of entry to conduct an inspection of the rental unit, the Tenant shall comply with the notice.
6. If the Tenant fails to comply with the conditions set out in paragraphs 2 through 5 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 Tenant. 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 Tenant.
7. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
8. If the Tenant does not pay to the Landlord the full amount owing on or before June 13, 2023, the Tenant will start to owe interest. This will be simple interest calculated annually at 6.00% starting June 14, 2023 on the balance outstanding.

June 2, 2023

Date Issued

John Cashmore

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.