



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

Citation: Brantford Native Housing v Davis, 2023 ONLTB 31421

Date: 2023-06-01

File Number: LTB-L-001627-22

In the matter of: LOWER, 43 BRIGHTON AVE
BRANTFORD ON N3S1V8

Between: Brantford Native Housing Landlord

And

Leonard Davis Tenant

Brantford Native Housing (the 'Landlord') applied for an order to terminate the tenancy and evict Leonard Davis (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 someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises.

This application was heard by videoconference on March 2, 2023.

Only the Landlord's representative J Nieuwhof, and the Landlord's employee D Pacheco attended the hearing.

The Landlord's witnesses and employees D Vanevery and B Beaven were also in attendance.

As of 9:42 am, the Tenant was not present or represented at the hearing 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 and the claim for compensation in the application. Therefore, the tenancy will be terminated and the Tenant is ordered to pay to the Landlord the costs of damage to the unit as claimed by the Landlord.

Previous Adjournment and Application Amendment

2. This matter was adjourned from a previous date. At that hearing, it was noted that although the Landlord had served two N5 Notices of Termination, the second N5 notice was invalid as it contained the same issues as the first N5 Notice. The Landlord requested an adjournment in order to amend the Landlord's application to show that the application would be pursued on the first N5 only.

The Facts

3. The residential complex is a house, consisting of an upper and a lower unit. The Tenant resides in the lower unit. The Tenant has resided in the rental unit since June 1, 2019 and pays monthly rent in the amount of \$400.00.
4. On December 20, 2021, the Landlord served a voidable N5 Notice of Termination ('N5 notice') alleging that the Tenant's behaviour or the behaviour of someone visiting or living with them has substantially interfered with another tenant's or the Landlord's reasonable enjoyment of the residential complex or lawful rights, privileges, or interests and that the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises.
5. The N5 Notice of Termination alleged the following facts:
 1. A chemical smell emanated from the unit and gave the neighbors symptoms of headaches and nausea on the following dates:
 1. November 23, 2020
 2. January 11, 2021
 3. January 18, 2021
 4. January 21, 2021
 5. January 24, 2021
 2. Upon inspection of the unit on November 22, 2021, it was discovered by the Landlord that the Tenant had:
 1. Painted the inside of the unit
 2. Painted the windows black and dark blue
 3. Damaged the walls, doors and plumbing of the unit

4. The Tenant was allowing an individual to live in the shed outdoors 5. The Tenant was hoarding items, debris and garbage in the backyard
3. The Landlord claimed \$5,500.00 to repair the damages referred to above.
6. On an N5 Notice of Termination, a tenant is afforded the opportunity to void the notice by correcting the offensive behaviour or stopping the activity within seven days of being served with the N5 notice. In this particular case, the voiding period was from December 20, 2021 to December 27, 2021.
7. The Tenant did not repair the damaged property nor pay to the Landlord the amounts claimed for damages during the voiding period.

Substantial Interference -- Chemical Smell

8. The Landlord's witness, B Beaven, Community Relations Manager, testified that in November 2020, the tenant in the upstairs unit of the residential complex contacted the Community Relations Office to complain of objectionable smells entering her unit from the Tenant's unit. The neighbor described these smells as toxic fumes, gasoline fumes and smells of burning garbage. The neighbor indicated that even though she kept the windows open, she was getting headaches and feeling nauseated from the smell. B Beaven testified that she was contacted by the upstairs tenant on November 23, 2020; January 11, 2021; January 18, 2021; January 21, 2021 and January 24, 2021. Because the Tenant's activities continue to disturb the upstairs tenant, she has placed a request to be moved to a different unit. The upstairs tenant has said that she is unwilling to contact other authorities as she fears reprisal from the Tenant.
9. B Beaven testified that she has offered support to the upstairs tenant and has communicated with the Tenant to work with him to rectify the issues, however the Tenant is unwilling to change his activities.
10. The chemical smells occurred from November 23, 2020 to January 24, 2021. The Landlord did not submit any evidence that these smells occurred after January 24, 2021. The N5 Notice was served to the Tenant on December 20, 2021, and the voiding period extended to December 27, 2021.
11. On the basis of the uncontested evidence before me, I find that the Tenant has voided the allegation of substantial interference with another tenant's or the Landlord's reasonable enjoyment of the residential complex or lawful rights, privileges, or interests by allowing activities to continue that disturb other tenants in the residential complex, and this portion of the Landlord's claim will be denied.

Damages

12. The Landlord's witness D Vanevery testified that the unit was completely renovated prior to the commencement of the current Tenant's tenancy in March 2019.
13. The Landlord inspected the unit in 2020, November 2021, August 2022 and January 2023.
14. In 2020, it was noted that the Tenant had begun some painting inside the unit.

15. In November 2021, it was noted that the Tenant had continued to paint the inside of the unit, that many of the rooms were painted on the walls and onto the ceiling. D Vanevery testified that the windows were painted over in black paint and that some of the outside surfaces of the windows were painted in a dark blue paint. This dark blue paint has remained “wet to the touch” and “sticky” for a lengthy period of time, including to subsequent inspections.
16. D Vanevery testified that there was significant damage to the unit noted in the November 2021 inspection, including a bathroom window that was boarded over because it was broken, there was a fist-sized hole in a wall inside the unit and damage to the bathroom wall, the Tenant had damaged the bathroom vanity, the Tenant had removed multiple light fixtures, and removed interior doors including a bedroom door and the door to the basement.
17. During the same inspection, D Vanevery testified that there was hoarding of debris and garbage in the backyard of the unit and that the Tenant had verbally informed the Landlord that his daughter was living in the outdoor shed in the backyard.
18. The Landlord’s witness also provided pictures and testimony that there was no change to the damage or hoarding when the unit was re-inspected in August 2022 and January 2023.
19. Based on the uncontested evidence, on a balance of probabilities, the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises by painting the inside, outside and window surfaces of the unit, caused or allowed damage to be caused to the walls, that doors were removed and lighting fixtures were removed. The Tenant did not void the N5 Notice by either repairing the damage or paying to the Landlord the amount that the Landlord claimed in the N5 Notice.

Compensation for Damages

20. The Landlord is seeking \$5,500.00 in costs for damages.
21. The Landlord’s witness D Vanevery testified that the damage at this time is so extensive, in her opinion, that the unit will require to be completely renovated in order for it to be rented again. She estimates this cost to be \$15,000.00 to \$20,000.00.
22. The renovation work is completed by an in-house maintenance team, and therefore there were no written quotes for the work that would be required to repair the damage to the rental unit. However a similar unit was currently undergoing renovation and that cost was approximately \$16,000.00.
23. Based on the uncontested evidence before me, I find the reasonable costs to repair or replace the damaged property is \$5,500.00.

Daily Compensation, Rent Deposit

24. The Tenant was in possession of the rental unit on the date the application was filed.

25. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
26. The Landlord collected a rent deposit of \$400.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$21.13 is owing to the Tenant for the period from June 1, 2019 to March 2, 2023 .
27. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

Relief from Eviction

28. The Landlord has attempted to work with the Tenant to remedy the Tenant's behavior, but the Tenant is unwilling to cooperate with the Landlord. The Landlord believes that the Tenant is not willing to adjust his behavior and that the Tenant will continue to damage the unit. The Landlord requested an extended termination date.
29. 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. The Tenant did not attend the hearing to present evidence or submissions in support of granting relief from eviction.

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 June 12, 2023.
2. The Tenant shall pay to the Landlord \$5,264.87, which represents the reasonable costs of repairing the damages to the rental unit, plus the cost of filing the application, less the deposit held by the Landlord and the interest on that deposit.
3. The Tenant shall also pay to the Landlord \$13.15 per day for compensation for the use of the unit from March 2, 2023 to the date the Tenant moves out of the unit.
4. If the unit is not vacated on or before June 12, 2023, then starting June 13, 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 June 13, 2023.

June 1, 2023

Date Issued

Heather Kenny

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 December 13, 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.