



**Order under Section 69 / 88.1 / 88.2
Residential Tenancies Act, 2006**

Citation: Calabrese v Lefler, 2023 ONLTB 40338

Date: 2023-05-31

File Number: LTB-L-019126-22

2023 ONLTB 40338 (CanLII)

In the matter of: 43 HARTZEL RD
ST CATHARINES ON L2P1M6

Between: Lina Calabrese Landlord

And

Krystal Lynn Ann Lefler Tenant

Lina Calabrese (the 'Landlord') applied for an order to terminate the tenancy and evict Krystal Lynn Ann Lefler (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 Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

Lina Calabrese (the 'Landlord') applied for an order requiring Krystal Lynn ann Lefler (the 'Tenant') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

Lina Calabrese (the 'Landlord') applied for an order requiring Krystal Lynn ann Lefler (the 'Tenant') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's conduct or that of another occupant of the rental unit or someone the Tenant permitted in the residential complex. This conduct substantially interfered with the Landlord's reasonable enjoyment of the residential complex or another lawful right, privilege or interest.

This application was heard by videoconference on February 21, 2023. The Landlord and the Tenant attended the hearing. 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. Therefore, the tenancy is terminated as set out below.

L2 Application

2. On February 20, 2022, the Landlord gave the Tenant an N5 notice of termination. The notice of termination alleges the Tenant left an unacceptable amount of garbage outside the rental unit.
3. The Tenant provided pictures to the board showing an inordinate amount of garbage outside the rental unit. There was so much garbage that the Landlord was found to be in contravention of a municipal by-law. The Tenant refused to move the garbage from the rental unit. On March 26, 2022, the City of St. Catherine's attended the rental unit on March 26, 2022, and removed the garbage. The Landlord testified that the Tenant continues to leave garbage around the rental unit.

Analysis

4. Section 64 of the *Residential Tenancies Act, 2006* (Act) states:
 - (1) *A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant*
 - (3) The notice of termination under subsection (1) is void if the tenant, within seven days after receiving the notice, stops the conduct or activity or corrects the omission.
5. I accept the Landlord's testimony that the Tenant continues to leave garbage around the rental unit. Therefore, the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the Act.
6. The question before the Board is whether the conduct of the Tenant constitutes substantial interference warrants termination under s.64(1) of the Act.
7. There was so much garbage at the rental unit the municipality had to come and dispose of it. This suggests the amount of garbage is excessive and contrary to a local by-law. More

concerning is the Tenant continues to leave excess garbage outside the rental unit. These leaves the Landlord exposed to further by-law infractions and charges.

8. Based on the foregoing, I find the N5 notice served under s.64(1) is warranted and the application for eviction shall be granted.
9. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
10. The Tenant was required to pay the Landlord \$17,698.36 in daily compensation for use and occupation of the rental unit for the period from March 6, 2022 to February 21, 2023.
11. Based on the Monthly rent, the daily compensation is \$50.14. This amount is calculated as follows: \$1,525.00 x 12, divided by 365 days.
12. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
13. The Landlord collected a rent deposit of \$1,525.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$79.63 is owing to the Tenant for the period from June 1, 2019 to February 21, 2023.
14. 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.

Damage

15. Section 89(1) of the Act authorizes the Board to order the Tenant to repay the Landlords for reasonable out-of-pocket expenses incurred because of damage the Tenant willfully
16. I find Landlord has incurred reasonable out-of-pocket expenses of \$1,049.83 related to clean up the rental unit. Accordingly, The Tenant shall be ordered to pay the Landlord \$1049.84

Unpaid Utilities

17. The Landlords application alleges the Tenant has paid utility bills. The Landlord has not served a notice of termination on this ground and seeks only compensation related to the unpaid utility bills.
18. Section 88.2 of the Act says:

(1) A landlord may apply to the Board for an order requiring a tenant or former tenant to pay costs described in subsection (4) if,

(a) while the tenant or former tenant is or was in possession of the rental unit, the tenant or former tenant failed to pay utility costs that they were required to pay under the terms of the tenancy agreement

19. The Landlord has provided receipts for unpaid utility bills totalling \$665.92 as of the date of the hearing. The Tenant shall be ordered to the Landlord \$665.92 for unpaid utility bills.

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 11, 2023.**
2. If the unit is not vacated on or before June 11, 2023, then starting June 12, 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 June 12, 2023.
4. The Tenant shall pay to the Landlord \$16,093.72, which represents compensation for the use of the unit from March 6, 2022, to February 21, 2023, less the rent deposit and interest the Landlord owes on the rent deposit.
5. The Tenant shall pay to the Landlord \$665.92 which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the unpaid utility costs.
6. The Tenant shall pay to the Landlord \$1,049.83, which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the substantial interference.
7. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
8. The total amount the Tenant owes the Landlord is \$17995.17
9. The Tenant shall also pay the Landlord compensation of \$50.14 per day for the use of the unit starting February 22, 2023, until the date the Tenant moves out of the unit.
10. If the Tenant does not pay the Landlord the full amount owing on or before June 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 01, 2023, at 6.00% annually on the balance outstanding.

May 31, 2023

Date Issued

Bryan Delorenzi

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 12, 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.