



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

Citation: JEFFREY PADBURY v JOANNE DILLABOUGH, 2023 ONLTB 39984

Date: 2023-05-30

File Number: LTB-L-078773-22

In the matter of: 6385 6TH CONCESSION RD AUGUSTA
ON K6V5T2

Between: JEFFREY PADBURY Landlord

And

JOANNE DILLABOUGH Tenant

JEFFREY PADBURY (the 'Landlord') applied for an order to terminate the tenancy and evict JOANNE DILLABOUGH (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 or another occupant of the rental unit has committed an illegal act or has carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential complex; and 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 claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on May 15, 2023. The Landlord, the Landlord's legal agent, Laura Pennell, the Tenant and the Tenant's legal representative, Linda Tranter, attended the hearing

Determinations:

1. It is undisputed that the rental unit is a single family house, that the tenancy started on September 1, 2019, that the Landlord served the Tenant the N5 notice of termination (the N5) that forms the basis of the application on July 29, 2021, that the N5 exclusively relates to debris and other chattel items that the Tenant has allegedly placed throughout the

landsite of the house and that the N6 and N7-based portions of the application relates exclusively to alleged interaction between Laura Pennell and the Tenant's partner, Chris Van Stokes.

2. The Landlord testified that during an inspection of the unit that occurred in either September 2020 or September 2022 he discovered numerous refuse items and other chattel scattered extensively over the land site of the unit. These items consisted of: a pile of 20 bags of household garbage; three to four empty gas cans; 30 wooden skids; two homemade sheds made of skids and tarps; an extension cord running from an open window in the basement (because the basement window was open rain water entered the basement); a camper trailer which is missing one of its exterior walls; and scrap metal.
3. The Landlord then tendered numerous photographs of the state of the landsite that he took in April 2022. These included a picture of a trampoline with wood boards on it and two pool ladders behind it and a picture of five tires in the front yard.
4. However, the Tenant testified that after serving the N5 he did not re-attend at the unit at least until either 2021 or 2022 as he wanted to give the Tenant additional time to rectify the issue. As such, the Landlord further testified that he is unaware as to whether the Tenant voided the N5.
5. At the conclusion of the Landlord's evidence-in-chief, and cross examination and reexamination of the Landlord in relation to the N5 issues I made a directed ruling against the N5-based portion of the application as, by his own admission, the Landlord was unable to satisfy me that the N5, which is a "first" N5 termination, was not voided. The Landlord would have had to demonstrate that the N5 was not voided as a pre-condition to the granting of the N5 portion of the application.
6. In relation to the portions of the application related to the N6 and N7 notices of termination Laura Pennell testified that she attended at the rental unit on August 28, 2020 and June 18, 2021 to take pictures, at which time the Tenant's partner, Chris Van Stokes, followed her around the grounds of the unit taking pictures and "getting in my personal space". While Laura Pennell contacted the police in relation to these incidents, no charges were ever laid.
7. In response, Chris Van Stokes testified that he was not present at the unit on one of these dates and did not enter Laura Pennell's personal space on the other date.
8. As the applicant, the Landlord bears the burden of proving the merits of his application on a balance of probabilities (i.e., at least 51% of the way). Both parties are equally credible to me in relation to this issue as there is an insufficient basis in the evidence to believe one party over the other. As such, I determined that the Landlord has not proven the merits of this claim.
9. The Landlord also testified that he inspected the unit on June 21, 2021, at which time he discovered that the smoke detector had been removed from the kitchen.

10. The Tenant testified that he detached the smoke detector on this day because it alarmed when he was cooking and that he reinstalled it immediately after the Landlord's inspection.
11. I accepted the Tenant's uncontested testimony that he voided the notice in relation to this issue and as such, I denied this claim.
12. It undisputed that the Landlord's statement in his pleadings related to damaged walls in the staircase are not the proper subject matter of the application in that the Landlord did not serve a notice of termination based on damage. As such, I declined to consider this issue in my assessment of the merits of the application.

It is ordered that:

The application is denied.

May 30, 2023

Date Issued

Sean Henry

Vice Chair, 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.