



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

Citation: NORTH EDGE PROPERTIES LTD. v Tavanlar, 2023 ONLTB 26309

Date: 2023-05-26

File Number: LTB-L-019379-22

In the matter of: 1205, 80 ST CLAIR AVE E
TORONTO ON M4T1N6

Between: NORTH EDGE PROPERTIES LTD. Landlord

And

Lourdes Tavanlar Tenant

NORTH EDGE PROPERTIES LTD. (the 'Landlord') applied for an order to terminate the tenancy and evict Lourdes Tavanlar (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.

This application was heard by videoconference on February 21, 2023.

Only the Landlord's Legal Representative Geoff Paine and Landlord's Agent Property Manager Maria Fotiadis attended the hearing.

As of 11:09 a.m., 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 is terminated on June 6, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On March 24, 2022, the Landlord gave the Tenant an N5 notice of termination deemed served on that day. The notice of termination contains the following allegations:
 - On March 14, 2022 during an inspection of the rental unit on the floor below, the Landlord's Superintendent found yellow liquid was leaking through the bathroom ceiling vent from the unit above (the Tenant's unit).
 - On March 15, 2022 the Tenant's rental unit was inspected. A large pile of used toilet paper was found on the bathroom floor, and the toilet was overflowing with feces. A large number of bags and boxes of clothing and garbage were in the rental unit.
4. The rental complex is a 27-storey high rise building with approximately 300 units. The Tenant moved into the rental complex on May 1, 2020 and resides on the 12th floor.
5. Maria Fotiadis (MF), the Property Manager, testified on behalf of the Landlord. A series of photos of the inside of the rental unit were entered into evidence.
6. MF testified that around March 14, 2022, the Landlord received complaints from other tenants about an unpleasant smell emanating from the Tenant's rental unit. The smell was apparent in the hallway immediately after exiting the elevator.
7. On March 14, 2022, the Superintendent investigated a maintenance complaint from the unit below the Tenant's that yellow liquid was coming from the bathroom ceiling fan.
8. Upon inspection of the Tenant's rental unit on March 15, 2023, he and MF found used toilet paper on the bathroom floor which had obviously been collecting for some time, and the toilet full to the rim with feces and overflowing onto the floor. It was their assessment that the Tenant had likely also toileted on the floor.
9. The Superintendent determined that because of these issues, waste from the Tenant's bathroom was leaking through the floor and into the unit below through that unit's bathroom fan. No maintenance request had been made by the Tenant.
10. Repairs were made in the Tenant's rental unit, including replacing the toilet with a larger diameter model. Repairs were required at least twice to the unit below.
11. During the inspection, MF determined that the multiple boxes and bags of clothing throughout the unit were also filled with human waste and used toilet paper. There was feces on the floor.
12. The Tenant cancelled a follow-up inspection on March 22, 2023. The N5 Notice To End Tenancy (N5) was served on the Tenant on March 24, 2023.

13. On April 1, 2023, MF conducted another inspection of the unit, and the bags and boxes of waste were still present. She testified that the Tenant did not stop the conduct or activity within seven days after receiving the N5 notice of termination, and in fact the conduct has continued since the N5 was served to the present time. Therefore, the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).
14. MF testified that the smell from the Tenant's unit is evident immediately upon exiting the elevator on the floor and that they are no longer able to rent out units on the entire floor of the complex due to the increasing smell and the health hazard posed by the Tenant's behaviour. She stated that they continue to receive several calls a week from other tenants regarding the smell emanating from the Tenant's rental unit.

Analysis

15. Having reviewed the photographs and on the basis of MF's testimony, I am satisfied that the Landlord has proven the allegations in the N5 notice. As a direct result of the Tenant's failure to comply with her obligation to maintain an ordinary state of cleanliness of the rental unit there are obnoxious odours and liquids emanating from the rental unit which have impacted the other residents of the building. I am also satisfied that this conduct substantially interferes with a lawful right, privilege or interest of the Landlord since the Landlord has the right and obligation to maintain health and safety standards within the residential complex.

Relief from eviction

16. 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.
17. While there is no direct evidence before me, the Tenant's behaviour itself is a strong indicator that she lives with a disability under the *Human Rights Code*. The Landlord has a duty to accommodate the Tenant's disability to the point of undue hardship, but the Tenant must participate or cooperate with the Landlord to some degree to make the accommodation process successful.
18. The Landlord states that they are aware that the Tenant has an apparent need for accommodation under the *Human Rights Code*. They have tried to work with the Tenant and to determine if she has family or personal supports who can assist her, but she has not been open to revealing any personal circumstances, has not requested any accommodation due to any disability, and has not provided any information about friends or family who might be able to assist.
19. MF testified that at one point after multiple attempts to work with the Tenant to address the issue, police were called for assistance, who attended with a mobile crisis unit mental health nurse. This nurse has followed up with the Tenant.

20. MF stated that they now conduct weekly inspections of the Tenant's unit at her request. She promised the Landlord that clean-up of the unit was on "her goal list" but limited (if any) progress has been made in almost one year.
21. Based on the Landlord's uncontested evidence I am satisfied, on a balance of probabilities, that the Landlord has made sufficient efforts to attempt to start the accommodation process with the Tenant but that the Tenant has not participated in the efforts to accommodate her. Therefore, I am satisfied that the Landlord has met any accommodation obligations under the Code.
22. Termination of a tenancy is a remedy of last resort, and the Board will consider granting conditional relief from eviction if it would not be unfair to do so given all the circumstances. In addition, under the *Human Rights Code* landlords have a duty to accommodate a tenant's disability up to the point of undue hardship. In my view, however, it would be unfair to grant conditional relief in this case because the Tenant's conduct has caused substantial hardship to the Landlord as other tenants are significantly affected and the Landlord is no longer able to rent out units on an entire floor of the rental complex. Because improperly disposed-of human waste is the subject of the substantial interference, there is also objectively a serious health and safety issue which affects the Tenant herself, staff, and other tenants in the rental complex.

Daily compensation

23. The Tenant was required to pay the Landlord \$16,545.21 in daily compensation for use and occupation of the rental unit for the period from April 23, 2022 to February 21, 2023. Monthly rent that was paid during this period will be deducted from this amount.
24. Based on the Monthly rent, the daily compensation is \$54.25. This amount is calculated as follows: \$1,650.00 x 12, divided by 365 days.
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 \$1,650.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$53.37 is owing to the Tenant for the period from May 1, 2020 to February 21, 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.

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 6, 2023.

2. If the unit is not vacated on or before June 6, 2023, then starting June 7, 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 7, 2023.
4. The Tenant shall pay to the Landlord \$14,841.84, which represents compensation for the use of the unit from April 23, 2022 to February 21, 2023, less rent payments made during this period, less the rent deposit and interest the Landlord owes on the rent deposit.
5. The Tenant shall also pay the Landlord compensation of \$54.25 per day for the use of the unit starting February 22, 2023 until the date the Tenant moves out of the unit.
6. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
7. As of the date of the hearing, the amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the amount the Landlord is entitled to by \$(1,517.37).
8. However, the Landlord is authorized to deduct from amount owing to the Tenant \$54.25 per day for compensation for the use of the unit starting February 22, 2023 to the date the Tenant moves out of the unit.
9. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

May 26, 2023

Date Issued

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 7, 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.

