



Order under Section 69
Residential Tenancies Act, 2006

Citation: Merritt St. Apartments Inc. v Osayande, 2023 ONLTB 37381

Date: 2023-05-12

File Number: LTB-L-067020-22

2023 ONLTB 37381 (CanLII)

In the matter of: E, 356 MERRITT ST
ST CATHARINES ON L2T1K8

Between: Merritt St. Apartments Inc. Landlord

And

Amadasu Osayande Tenant

Merritt St. Apartments Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Amadasu Osayande (the 'Tenant') because:

- 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;
- 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.

This application was heard by videoconference on January 31, 2023.

The Landlord's Agent, N. Vigneswaren and the Tenant attended the hearing.

S. Papoz attended as witness for the Landlord.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy in the application. Therefore, the tenancy is terminated.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N6 and N7 Notices of Termination

3. On November 4, 2022, the Landlord gave the Tenant an N6 and N7 notice of termination. The notices of termination contain the same allegations, they are summarized below:
- On November 3, 2022, the Landlord attended at the residential complex because of an annual fire safety inspection. He received a call from the site superintendent advising that the keys for unit E did not work as the Tenant changed the locks. At approximately 12:00 p.m., the Landlord was speaking to the Tenant in unit C when the Tenant from unit E was walking up the stairs approaching his unit. The Landlord asked the Tenant from unit E if he changed the locks and the Tenant did not answer, the Landlord asked again, and the Tenant did not answer. The Landlord had another notice to serve to the Tenant so as the tenant was closing the door to his unit, the Landlord slipped the notice through the door.
 - The Landlord continued to talk to the Tenant from unit C. The Tenant from unit E opened his door and threw the crumpled-up notice at the back of the Landlord's head and retreated back into his unit.
 - The Landlord knocked on the unit E's door to give him back the notice, and the Tenant opened his door and started to swear at the Landlord. The Tenant grabbed the Landlord by his neck and pushed him to the edge of the stairwell while saying he was going to push the Landlord down the stairs. The Tenant from unit C witness the incident and screamed for someone to call 911. The Tenant from unit E then let go of the Landlord and went back into his unit.
 - The Landlord went to his car to call the police. The Tenant approached the Landlord's car and the Landlord advised the Tenant that he was calling the police. The Tenant replied "I will see you next time" and then got into his car and left. □ The police attended the unit, however the Tenant was not there.

Landlord's evidence

4. The Landlord's agent, N. Vigneswaren owns the building. He testified that he attended the unit on November 3, 2022 because he was called by the super who advised him that the key for unit E did not work. The Landlord arrived at the complex and the Tenant was not home. The Landlord was speaking with the Tenant from unit C when the Tenant from unit E arrived. He asked the Tenant twice about changing the locks, but the Tenant did not answer and went to his unit door. As the Tenant was closing his door, the Landlord slipped the N4 notice of termination through the door. He testified that he went back to talking to the Tenant in unit C when the Tenant from unit E opened his door and threw the crumpled-up notice at the back of the Landlord's head. The Landlord turned around to face the Tenant to explain what the notice was, the Tenant got aggressive with the Landlord and grabbed the Landlord by his collar and pushed his back against the wall near the top of the stairwell. The Tenant threatened to push the Landlord down the stairs. The Tenant from unit C started to scream for help. At that point the Tenant let go of the Landlord and went back into his unit.
5. The Landlord testified that he was pretty shaken up and went down to his car to call 911. As he was on the phone with dispatch, the Tenant came up to his window and said "I'll see you next time". The Police attended at the complex however, the Tenant had left.
6. The Landlord attempted to obtain a police report, however, because the matter is still pending, the police would not release the report. The Landlord submitted a letter from the Niagara Police into

evidence stating that the request for information is denied as the case is currently before the courts. The Landlord testified that there are charges pending.

7. The Landlord testified that as a result of this incident, he cannot communicate with the Tenant because he is intimidated by him. He testified that he could have fallen down the stairs and broken his neck. He testified that he can no longer bring his family to the complex as he is scared that another incident may happen.
8. S. Papoz testified on behalf of the Landlord. She resides at the complex in Unit C, which is across the hall from the Tenant's unit, unit E. She testified that she was having a conversation with the Landlord on November 3, 2022 and the conversation took place right outside her unit door. She testified that the Tenant opened his door and he threw the crumpled-up paper at the Landlord. She testified that Landlord said to her "excuse me a moment" so she went back inside her unit and shut the door. She testified that moments later she heard a scuffle and opened her door and she saw the Tenant from unit E's hands clasped around the Landlord neck, she said it looked like the Tenant was trying to strangle the life out of the Landlord. She testified that she panicked and screamed for help, and then ran down the other set of stairs to get help from the super. By the time she came back up, she testified that they were still at it and the landlord had the butt of his hands pushed against the Tenant's shoulders, pushing him away. She went back inside her unit as it was an act of violence, and she was unsure if it would extend to her.

Tenant's Evidence

9. The Tenant testified that on November 3, 2022 he was returning home to the unit from doing deliveries and saw the Landlord talking to the Tenant in unit C. He went into his apartment, went to the washroom, saw the piece of paper in his unit and he crumpled it up and threw it outside his door. He testified that he went back to sleep and after 3 to 5 minutes, he heard pounding on his door and the Landlord was shouting "you are a pussy, you think you are a man?" He got up and opened his door and he testified that the Landlord kicked his door and grabbed his clothes by the collar and the Tenant started edging him out of the apartment. He testified that the neighbour was shouting "what's wrong with you guys?" He testified that he went back into his apartment and locked his door. He testified that he went to bed for an hour. The Tenant testified that he did not call the police because he didn't think it was much of an incident.
10. He testified that the police came a few days later and pressed charges and it is currently before the courts.

Analysis

11. The N6 notice of termination was served pursuant to section 61 of the Residential Tenancies Act, 2006, (the Act) which states:

61 (1) A landlord may give a tenant notice of termination of the tenancy if the tenant or another occupant of the rental unit commits an illegal act or carries on an illegal trade, business or occupation or permits a person to do so in the rental unit or the residential complex.
12. The N7 notice of termination was served pursuant to section 66 of the Act which states: 66 (1) A landlord may give a tenant notice of termination of the tenancy if,

- (a) an act or omission of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant seriously impairs or has seriously impaired the safety of any person; and
 - (b) the act or omission occurs in the residential complex.
13. Based on the evidence before me, I am satisfied on a balance of probabilities that the Tenant committed an illegal act within the residential complex and also impaired the safety of another person within the residential complex by assaulting the Landlord by grabbing the Landlord by the neck and pushing him towards the stairs.
14. The Landlord's testimony was consistent with the witnesses' testimony regarding the incident on November 3, 2022. The timeline of events as told by the Tenant do not make sense. For example, the Tenant testified that after the incident with the Landlord, he went to bed for an hour then left the complex. Both the Landlord and the witness testified that the Tenant came down to the parking lot within minutes of the incident and left the complex. I also find it questionable that if the incident happened as the Tenant described, where the Landlord kicked in his door, and lunged at him and grabbed him by the collar, the Tenant was of the view that the incident wasn't serious enough to warrant a call to the police. The Tenant also referenced another Tenant who witnessed the incident, yet the Tenant did not compel that person to attend the hearing and testify on his behalf. The Landlord testified that there was no other witness to the incident beside the witness that the Landlord called.

Relief from eviction

15. The Tenant testified that if the tenancy terminates, he would need approximately 2 months to find another unit. He testified that he lives in the unit by himself, and he has lived in the unit since 2014.
16. The Landlord is seeking eviction as soon as possible. The Landlord testified that as a result of this incident, he cannot communicate with the Tenant because he is intimidated by him. He testified that he could have fallen down the stairs and broken his neck. He testified that he can no longer bring his family to the complex as he is scared that another incident may happen.
17. I am of the view that this tenancy is not salvageable by way of a conditional order. In consideration of the seriousness of this issue, and also the delayed issuance of this order, 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 postpone the eviction until May 31, 2023 pursuant to subsection 83(1)(b) of the Act.
18. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
19. The Landlord collected a rent deposit of \$675.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$71.52 is owing to the Tenant for the period from April 1, 2016 to January 31, 2023.

20. 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 May 31, 2023.
 2. If the unit is not vacated on or before May 31, 2023, then starting June 1, 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 1, 2023.
 4. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
 5. If the Tenant doesn't pay to the Landlord the full amount owing by May 31, 2023, then starting June 1, 2023, Tenant will start to owe interest calculated annually at 6.00% on the balance outstanding.

May 12, 2023

Date Issued

Emily Robb

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 1, 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.