



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

Citation: Burley Investments LTD. v Robert Staulbaun, 2023 ONLTB 36470

Date: 2023-05-11

File Number: LTB-L-027688-22

In the matter of: Lower, 188 Park St N
Peterborough Ontario K9J3P6

Between: Burley Investments LTD. Landlord

And

David Herring Tenants
Robert Staulbaun

Burley Investments LTD. (the 'Landlord') applied for an order to terminate the tenancy and evict David Herring and Robert Staulbaun (the 'Tenants') because:

- the Tenants, another occupant of the rental unit or someone the Tenants 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 May 1, 2023.

Only the Landlord's Legal Representative, Kevin Anderson, and Traci Tepany as a witness for the Landlord, attended the hearing.

As of 10:51 a.m., the Tenants were 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 a preliminary issue the amended N5 and L2 application were accepted. Both documents were amended to include 'lower' in the address for the rental unit. The Tenants received the amended N5 the same day as the initial one was served, and the application

was amended prior to the hearing date. Further the Notice of Hearing was sent to the corrected address.

2. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy in the application.
3. On April 26, 2022, the Landlord gave the Tenants an N5 notice of termination on April 28, 2022. The notice of termination contains the following allegations: on September 21, 2021, By-Law issued an infraction for garbage and debris around the property; on April 20, 2023, the yard was in the same condition.
4. Based on the Monthly rent, the daily compensation is \$46.03. This amount is calculated as follows: \$1,400.00 x 12, divided by 365 days..
5. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
6. The Landlord collected a rent deposit of \$1,100.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$45.37 is owing to the Tenant for the period from March 1, 2020 to May 1, 2023.
7. 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.

Evidence and Testimony

8. Traci Tepany , the Landlord's daughter, testified that she is here on her mother's behalf because they just had her father's celebration of life yesterday and her mother was not able to attend and properly participate in the hearing today; she is aware of the situation at the property in question because she assists with the managing of it.
9. Ms. Tepany also testified that she saw the property this morning, and it had still not been cleaned; there is debris, everywhere, the front and the back yards, it makes it difficult to move or use the yard. The yard is a common area for all the tenants in the complex, but the Tenants have taken it over to such an extent that it cannot be properly used by anyone. The Landlord has reached out to the Tenants about cleaning the property, but it is still in a very unsavoury condition.
10. Ms. Tepany further testified that as indicated by the City of Peterborough Notice of Property Maintenance Violation issued on September 10, 2021 and the pictures taken at that time, the yards were cluttered with various debris that inhibited walking and/or use. The pictures taken on April 20, 2022, show some minor changes/improvement, but the yard is still not up-to-standard or usable. It is her understanding that the City violation is still pending and the Landlord will likely be fined if the situation is not resolved with this hearing; termination is necessary.
11. The book of documents relied on was served to the Tenants in accordance with the Board's rules.

Analysis

12. This application is based on sections 64 of the *Residential Tenancies Act, 2006* (the 'Act') which says:

64.(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.

13. Based on the uncontested evidence and testimony before me, I find the Tenant did not void the N5 notice within the 7-day voiding period, April 28, 2022 to May 5, 2022; the yards were not cleaned within that week and remain in a similar state to date.
14. I also find, based in the uncontested evidence and testimony before me, that the Tenants or an occupant of the rental unit has substantially interfered with another tenant of the rental complex and the Landlord's reasonable enjoyment, has substantially interfered with the Landlord's lawful interest in the property. The Landlord has reached out to the Tenants to clean the yards and is at risk of being fined if they remain in the present condition. There has been little to no change in the state of the yards since the notice of violation was issued in September 2021, I have no reasonable belief that the Tenants would comply with any extension if one was given. For all these reasons, termination must be granted.
15. 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. The Landlord's Legal Representative submitted this date allows the Tenants a bit longer than the standard 11-days, and the last month rent deposit can go to the last month, as May's rent has not been paid as of the hearing date. I find the Landlord's Legal Representative submission to be reasonable.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated. The Tenants 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. 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 \$(959.37).
6. However, the Landlord is authorized to deduct from amount owing to the Tenant \$46.03 per day for compensation for the use of the unit starting May 1, 2023 to the date the Tenants move out of the unit.
7. **If by the time the Tenants receive this order, May's rent has been paid, then the Landlord will return the rent deposit and any applicable interest minus the application filing fee and any per-diem compensation if the unit is not vacated on or before May 31, 2023**
8. The Landlord or the Tenants shall pay to the other any sum of money that is owed as a result of this order.

May 11, 2023

Date Issued

Diane Wade

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.