



Order under Section 69 Residential Tenancies Act, 2006

Citation: City Housing Hamilton Corporation v Dyan Furneaux, 2023 ONLTB 33828

Date: 2023-05-08

File Number: LTB-L-026951-22

In the matter of: 411, 430 CUMBERLAND AVE HAMILTON
ON L8M3M9

Between: City Housing Hamilton Corporation Landlord

And

Dyan Furneaux Tenant

L1 Application – Non-Payment of Rent

City Housing Hamilton Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Dyan Furneaux (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

L2 Application – Substantial Interference

The Landlord also applied for an order to terminate the tenancy and evict 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.

These two applications were heard by videoconference on April 19, 2023. The Landlord's representative, Sharon Churcher, attended the hearing. As of 4:54 pm the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the Board. 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. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before May 19, 2023.

L2 Application - Substantial Interference

2. On March 27, 2022 the Landlord served the Tenant with an N5 notice to end the tenancy for substantially interfering with other tenants' and the Landlord's reasonable enjoyment of the residential complex, lawful rights, privileges, or interests. The date of tenancy termination in this notice was April 30, 2022. I am satisfied that the first N5 notice was properly served and complied with section 64 of the Act.
3. In the N5 notice, the Landlord alleges that there is an excessive amount of garbage in the unit, there is dirt and grime on the flooring, kitchen counters and kitchen sink, clothing is scattered throughout the flooring, and garbage cans are overflowing with debris. The Landlord alleges that this state of uncleanliness impedes pest control treatment to counter the infestation of cockroaches in the unit.
4. The N5 notice gave the Tenant an opportunity to void the notice within 7 days, from March 28, 2022 to April 3, 2022, by removing all garbage and debris from the unit, cleaning all flooring, countertops and the sink, removing all clothing and other items from the floor, and maintaining the unit in a state of cleanliness that will not impede pest control efforts.
5. The Landlord filed an L2 application with the Board on May 12, 2022. The Tenant was in possession of the rental unit on the day of filing, and remains in possession of the rental unit as of the day of this hearing.

Landlord's Uncontested Evidence

6. The Landlord's representative submitted that on February 9, 2022 the Landlord's property manager and a pest control technician entered the unit and noticed an excessive amount of garbage strewn throughout the unit, a kitchen that was extremely dirty, clothing lying on the floors throughout the unit, and garbage receptacles overflowing with debris. The representative stated that the pest control technician reported that the unit was moderately to severely infested with cockroaches, and any pest control treatment would have little effect in the unit given the unit's state of uncleanliness.
7. The Landlord's representative submitted further that the Tenant's failure to maintain the unit in a state of ordinary cleanliness is a violation of the tenancy agreement.
8. The Landlord's representative stated that the Tenant did not clean the unit during the void period, noting that the property manager attended the unit on April 6, 2022 and on that date the unit was in the same state of uncleanliness as the previous visit on February 9, 2022. The representative stated further that the property manager attended the unit again on July 7, 2022, and the unit remained in the same state of uncleanliness as the previous two visits.

9. The representative remarked that after the Tenant was served the N5 in March 2022 he became verbally abusive to agents of the Landlord, resulting in several agents refusing to enter the unit.
10. The Landlord submitted three photos of the unit taken by the property manager on April 6, 2022, and a further three photos of the unit taken by the property manager on July 7, 2022.

Analysis

11. On the basis of the Landlord's uncontested evidence, I am satisfied that the Tenant failed to maintain his unit in an ordinary state of cleanliness, and that this failure has exacerbated a pest infestation in the unit, the treatment of which is impeded by the state of uncleanliness in the unit. Accordingly, I find that the Tenant's failure to maintain the unit in an ordinary state of cleanliness has substantially interfered with the Landlord's lawful right, privilege, or interest to maintain the unit free of pests. I find that s. 64(1) of the Act is applicable.

Relief from Eviction

12. 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.
13. On the basis of the Landlord's uncontested evidence, I am satisfied that the Tenant continues to maintain the unit in a state of uncleanliness that prevents pest control treatments from eradicating a moderate to severe cockroach infestation in the unit. I am also satisfied that the Tenant is not actively engaged to change the state of uncleanliness in the unit.
14. The Landlord's representative was not aware of any circumstances that should be considered in a determination of whether to provide the Tenant with eviction relief, nor was the Tenant or the Tenant's representative present at the hearing to provide submissions with respect to the Tenant's relief from eviction. For these reasons, and those provided in paragraph 13 above, it would be unfair to the Landlord to grant the Tenant with eviction relief.
15. As a result, the requested eviction order shall be issued based on the Landlord's L2 application.

L1 Application – Non-Payment of Rent

16. As an eviction order is being issued based on the Landlord's L2 application, it is not necessary to consider the request for eviction in the Landlord's L1 application. The Tenant will be ordered to pay the rent arrears owing less the last month's rent deposit and interest owing on the deposit pursuant to s. 86, s. 87(1)(a) and s. 106 of the Act.

17. As of the hearing date, the Tenant was still in possession of the rental unit.
18. The lawful rent is \$1,031.00. It is due on the first day of each month.
19. Based on the monthly rent, the daily rent/compensation is \$33.90. This amount is calculated as follows: \$1,031.00 x 12, divided by 365 days.
20. The Tenant made no rent payments to the Landlord since the application was filed.
21. The rent arrears owing to April 30, 2023 are \$15,388.00.
22. There is no last month's rent deposit for this tenancy.
23. The Landlord incurred costs of \$186.00 for filing the L1 and L2 applications together and is entitled to reimbursement of those costs.
24. This order contains all of the reasons for the decision within it and no further reasons shall be issued.

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 19, 2023.
2. The Tenant shall pay to the Landlord \$15,187.10. This amount includes rent arrears owing up to the date of the hearing and the cost of filing both applications. See Schedule 1A for the calculation of the amount owing.
3. The Tenant shall also pay to the Landlord compensation of \$33.90 per day for the use of the unit starting April 20, 2023 until the date the Tenant moves out of the unit.
4. If the Tenant does not pay the Landlord the full amount owing on or before May 19, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 20, 2023 at 6.00% annually on the balance outstanding.
5. If the unit is not vacated on or before May 19, 2023, then starting May 20, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. 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 May 20, 2023.

May 8, 2023

Date Issued

Frank Ebner

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 expires on November 20, 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.

**Schedule 1
 SUMMARY OF CALCULATIONS**

A. Amount the Tenant must pay as the tenancy is terminated

Rent Owing To Hearing Date	\$15,001.10
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$0.00
Less the amount of the interest on the last month's rent deposit	- \$0.00
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$15,187.10
Plus daily compensation owing for each day of occupation starting April 20, 2023	\$33.90 (per day)

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