



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

Citation: Cherry v Cook, 2023 ONLTB 33938

Date: 2023-05-04

File Number: LTB-L-041528-22

In the matter of: 10, 2074 QUEEN ST E
TORONTO ON M4E1E1

Between: Paul Cherry Landlord

And

Adam Cook Tenant

Paul Cherry (the 'Landlord') applied for an order to terminate the tenancy and evict Adam Cook (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.

This application was heard by videoconference on December 21, 2022. Only the Landlord and Landlord's legal representative T. Corradetti attended the hearing. As of 1:42 pm, 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, I am terminating the Tenancy and evicting the Tenant.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N6 Notice of Termination

3. On July 25, 2022, the Landlord gave the Tenant an N6 notice of termination deemed served on that date. The termination date on the notice is August 15, 2022. The notice of termination contains the following allegation:
- The Tenant or another occupant of the rental unit has committed an illegal act in the rental unit or the rental complex by
 - Causing disturbances in the building by yelling and using loud voices in the common areas including the hallways on all floors, the entrance, and outside the front of the building contrary to section 175 of the *Criminal Code of Canada* (the 'Code');
 - Uttering threats of physical harm to other residents contrary to section 264.1 of the Code;
 - Removing a publicly posted Trespass notice and permitting a person under trespass notice to trespass at night contrary to section 177 of the Code; and
 - Consuming alcohol around the complex, public intoxication and vomiting in public areas of the complex contrary to section 175(1) of the Code

Illegal Act

4. The Landlord presented a voluminous evidence package comprised of police reports, fire reports, resident complaints and sworn affidavits, diagrams of the complex, trespass notices and videos of the Tenant and a guest severely intoxicated in the common area of the complex and having belligerent interactions with other residents.
5. Incidents of loud, intoxicated and threatening behaviour occurred on May 20, 2022 in the hallways of the complex. The Tenant and a guest were severely intoxicated, unable to walk or stand, with a nearly empty bottle of alcohol. Either the Tenant or his guest vomited in the carpeted hallway of the complex on this date which prompted many resident complaints. When one resident came out of their unit to request that the Tenant stop the behaviour and go back to his unit, the Tenant engaged in threatening behaviour toward the other resident.
6. The tenant removed a trespass notice intended for one of his guests, J. Cooper, who has caused serious issues at the complex involving police. The Landlord replaced the trespass notice on May 25, 2022. The Tenant removed the new notice the next day on May 26, 2022. The Tenant permitted access to J. Cooper into the building on several occasions contrary to the trespass notice. On the evening of May 28, 2022, Police were called to remove the trespasser from the building, however, the Police were unable to gain entry to the locked building on this date.
7. I am satisfied that the uncontested evidence establishes that the Tenant and his guests committed an illegal act in the unit or the residential complex by:

- Causing disturbances on multiple occasions in the building by yelling and using loud voices in the common areas including the hallways on all floors, the entrance, and outside the front of the building contrary to section 175 of the *Criminal Code of Canada* (the 'Code');
 - Uttering threats of physical harm to other residents on May 20, 2022, contrary to section 264.1 of the Code;
 - Removing a publicly posted Trespass notice on multiple occasions and permitting a person under trespass notice to trespass at night contrary to section 177 of the Code; and
 - Consuming alcohol around the complex, public intoxication and vomiting in public areas of the complex on May 20, 2022 contrary to section 175(1) of the Code.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
 9. The Landlord collected a rent deposit of \$1,825.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$31.92 is owing to the Tenant for the period from July 8, 2021 to December 21, 2022.
 10. The amount of interest owed by the Landlord shall be deducted from the amount the Tenant owes for the application filing fee.
 11. 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.

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. The incidents of trespassing, threats to other residents, public intoxication and vomiting in the hallways of the complex have escalated since the Tenant was served with notice of termination for these violations. At times the Tenant's level of intoxication leaves him totally incoherent and unable to walk or stand. A few days after the service of the N6 notice, the Tenant started a fire on the stove in his unit on July 30, 2022. During that incident, Fire responders discovered that the smoke alarm had been dismantled. The rental complex is a quiet building and residents are greatly disturbed and concerned for their safety due to the escalating conduct of the Tenant and his guests. Therefore, I find do not find that relief is warranted in this circumstance.

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 15, 2023.
2. If the unit is not vacated on or before May 15, 2023, then starting May 16, 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 May 16, 2023.
4. The Tenant shall pay to the Landlord \$154.08 which represents the filing fee paid by the Landlord, less the interest on the last month's rent deposit.
5. If the Tenant does not pay the Landlord the full amount owing by May 15, 2023, the Tenant will owe interest. This will be simple interest calculated from May 16, 2023 at 6.00% annually on the balance outstanding.

May 4, 2023

Date Issued

Donna Adams

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.