



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

Citation: Casimnir v Tindall, 2023 ONLTB 33367

Date: 2023-05-02

File Number: LTB-L-014923-23

In the matter of: 2, 42 PENHURST AVE
ETOBICOKE ON M8Y3A8

Between: Jodelle Casimnir Landlord

And

Clifford Tindall Tenant

Jodelle Casimnir (the 'Landlord') applied for an order to terminate the tenancy and evict Clifford Tindall (the 'Tenant') because:

- 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.

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 April 18, 2023.

The Landlord, the Landlord's legal representative, Christopher Karas, and the Tenant attended the hearing. Emmanuel Noel (EN) attended the hearing as a witness for the Landlord. The Tenant spoke to Tenant Duty Counsel prior to the hearing.

Preliminary issues:

French Language Services

1. On April 4, 2023, the Landlord requested French language services (French language services were not requested in the original application).
2. Before the commencement of the hearing, I communicated to the Landlord that it was the Board's intention to reschedule this matter so that French language services could be provided. The Landlord and her legal representative said that they wanted to withdraw the request for French language services and that the hearing could proceed in English. As a result, the hearing proceeded in English.

Notice of Termination

3. At the commencement of the hearing, I asked the Landlord's legal representative to speak to the sufficiency of the details in the N7 Notice of Termination (N7). I prefaced this inquiry by stating that I was satisfied that paragraph five of the N7 provided sufficient details with respect to the incident alleged to have occurred on December 17, 2022. In response, the Landlord's legal representative stated that the Landlord would not rely on any of the other allegations identified in the N7. As a result, the application proceeded on the basis of paragraph five of the N7 only.
4. Although the N7 referred to another N5 Notice of Termination (N5), an N5 was not filed with the Board and the application did not identify that it was based on an N5. The Landlord's legal representative did not seek to amend the application or introduce the missing N5 and stated that he wished to proceed with the application based on the N7 alone.

Determinations:

5. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy, however, given the circumstances of this case, I find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.
6. On February 15, 2023, the Landlord gave the Tenant an N7 notice of termination alleging that on December 17, 2022, at 1:12 AM, the Tenant broke down the door to another unit in the residential complex causing EM to flee that unit (hereinafter 'the incident').
7. The parties agreed that EM resided in the unit directly above the Tenant's rental unit at the time of the incident and that EM is the Landlord's son.
8. EM testified that he was lying down in his unit getting ready to sleep when the Tenant started banging loudly on the door to EM's unit with what sounded like a baseball bat. He said that he felt that the Tenant would break down his door so he jumped out the secondstory window of his unit, shouted for help, and called the police. He said the Tenant

subsequently exited the residential complex and chased him down the street. EM said that he has not returned to reside in his unit since the date of the incident.

9. The Landlord submitted into evidence video surveillance recordings showing the front yard and street in front of the residential complex on the night of the incident. The videos show EM running out from the side of the building towards the front and yelling for help. Loud shouting (including profanities and demands to “open the door”) and loud banging can be heard in the background. The videos also show the Tenant exiting the building and chasing EM down the street.
10. EM said that he did not know why the incident occurred. He said that nothing had happened, he was not making any noise, and that he was not doing anything to instigate the incident.
11. EM also testified that there was a long-running conflict between himself and the Tenant.
12. Both the Landlord’s legal representative and myself asked EM several times why there was conflict between EM and the Tenant and EM stated that he did not know.
13. With nudging from the Landlord’s legal representative, EM ultimately stated that he thought the Tenant was racist, however, he did not explain how he reached this conclusion and the Tenant vigorously denied this accusation.
14. The Landlord did not lead any evidence to support the allegation that the Tenant broke down the door to EM’s unit and the Tenant denied doing so.
15. The Tenant did not deny banging on EM’s door and chasing him down the street, but did provide a contextual background for the incident. The Tenant testified that the Landlord purchased the building in the spring or summer of 2022 and that the Landlord was permitting her son to misbehave at the residential complex as a means of forcing the sitting tenants out of the residential complex. The Tenant submitted a letter dated April 11, 2023 from the former tenant of the basement unit stating that this tenant moved out because of EM’s behaviour.
16. The Tenant said that EM repeatedly played loud music and would intentionally bang on the floor of EM’s unit (i.e. the Tenant’s ceiling). He said that on December 15, 2022, two days prior to the incident, EM ripped the thermostat from the wall resulting in loss of heat in the residential complex. He said on the day prior to the incident, EM had shut off the electricity to the Tenant’s rental unit. He said he was yelling and banging on EM’s door at the time of the incident to get EM to restore the heat and electricity to the Tenant’s rental unit.
17. The Landlord’s legal representative was given the opportunity to recall EM as a witness to rebut the Tenant’s testimony, but declined to do so. As a result, the Tenant’s testimony with respect to EM ripping out the thermostat and discontinuing the heat went largely unchallenged. The Tenant’s testimony with respect to discontinuation of the electricity in the rental unit just prior to the incident was also largely unchallenged. EM’s testimony that he did not do anything to instigate the incident was general in nature and was not sufficient

to rebut the Tenant's testimony. To rebut the Tenant's allegations, EM would have had to testify with respect to the Tenant's specific allegations. As a result, I find, based on the evidence before me on a balance of probabilities, that EM discontinued the heat and electricity to the Tenant's rental unit.

18. In light of the above, I find that the Tenant seriously impaired the safety of EM by yelling and banging on EM's door and by chasing EM off the residential complex. There was insufficient evidence before me to find that the Tenant broke down EM's door.
19. Having said that, I find EM's goading of the Tenant to be a mitigating factor warranting relief from eviction.
20. As a result, having considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), I find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
2. The Tenant shall not impair the safety of any person in the residential complex. In particular, but without limiting the above, the Tenant shall not aggressively bang or yell outside the entrance door to any other unit in the residential complex and shall not chase anyone at the residential complex.
3. If the Tenant fails to comply with the conditions set out in paragraph two of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.

May 2, 2023

Date Issued

Richard Ferriss

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.