



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

Citation: Chang v Onami, 2023 ONLTB 32089

Date: 2023-04-27

File Number: LTB-L-068478-22

In the matter of: 1501, 60 BERWICK AVENUE
TORONTO ON M5P1H1

Between: Louis Chang Landlords
Winnie Chang

And

Neda Onami Tenants
Negar Shakeri

Louis Chang and Winnie Chang (the 'Landlords') applied for an order to terminate the tenancy and evict Neda Onami and Negar Shakeri (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 Landlords or another tenant.

The Landlords also claimed compensation for each day the Tenants remained in the unit after the termination date.

Louis Chang and Winnie Chang (the 'Landlords') also applied for an order requiring Neda Onami and Negar Shakeri (the 'Tenants') to pay the Landlords's reasonable out-of-pocket costs the Landlords has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex.

This application was heard by videoconference on April 12, 2023.

The Landlord's Legal Representative, Zeeshan Rahman and the Landlord, Winnie Chang (WC) attended the hearing.

The Tenant, Negar Shakeri (NS) attended the hearing and spoke to Tenant Duty Counsel prior to the hearing.

Background:

1. This application was scheduled for March 8, 2022, at which time it was adjourned due to lack of time to start the proceedings.
2. The hearing was rescheduled and heard on December 22, 2022.
3. The member who originally heard the application on December 22, 2022, was unable to issue an order and was rescheduled to be heard de novo for April 12, 2023.

Preliminary Issue- Does the N5 Notice Contain Enough Detail?

4. The second N5 Notice of Termination describes the details of the events as follows:
 - a) Breach of Section 117 of the Condominium Act and section 3.1 of the Condominium Declaration.
 - b) Legal letter was sent out by the Condominium legal team stating various rule violations including above.
5. The Landlords provided copies of letters that were sent to the Tenants on October 6, 2021 and October 15, 2021, from Lash/Condo Law that clearly state the Tenants have violated the Condominium Smoking rules in which smoking is prohibited in or upon the units, common elements and exclusive use common elements of the Corporation. The letters also clearly state that the Tenants has violated the Condominium rules by erecting drapes and a blanket enclosure on the balcony of the rental unit and storing miscellaneous loose items on the balcony. The letter further states the following:
 - a) only seasonal furniture is allowed on balconies, terraces, patios and exclusive use areas. All such items shall be safely secured in order to prevent such items from being blown off the balcony, terrace, patio of exclusive use areas by high winds.
 - b) No awnings or shades shall be erected over or outside of balconies, terraces, patios, and exclusive use areas without the prior consent of the Board. The Board shall have the right to prescribe the shade, colour, and material of such awnings or shades to be erected.
6. At the hearing the Tenant, NS testified that she did not understand what section 117 of the Condominium Act was or what section 3.1 of the Condominium declaration was, and she had not taken the time to research this.
7. The Tenant, NS further testified that she was in receipt of the letters dated October 6, 2021 and October 15, 2021 and understood what the allegations against her were in regard to smoking on the balcony of the rental unit and erecting drapes and a blanket enclosure on the balcony and storing miscellaneous loose items on the balcony.

8. I am satisfied that the second N5 Notice of Termination provides the Tenants sufficient details to come prepared to the hearing to properly speak to the application.

Amending the Application

9. The Landlords requested an amendment to the L2 application to remove the claim for damages and amend the claim to reasonable out of pocket expenses.
10. The Landlords also requested to amend the amount the Landlords is claiming from \$1333.40 which represents the cost of the two legal letters issued by the Condominium Corporation for the Tenant's behaviour to cease and desist. The letters were served to the Landlords and the Tenants on October 6, 2021 and October 15, 2021. The cost of each letter was \$666.70. The Landlords requested an amended amount of \$2000.10. This amended amount includes a third legal letter that was sent to the Landlords and the Tenants on December 8, 2021. The cost of this letter was \$666.70.
11. The Tenant, NS testified that she was in receipt of all three letters.
12. I consented to the request to amend the L2 application to remove the damage claim and amend it to reasonable out of pocket expenses the Landlords incurred in the amount of \$2000.10.

Determinations:

13. As explained below, the Landlords has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for reasonable out of pocket expense in this application. Therefore, I will be issuing a conditional order and an order for the Tenants to pay the reasonable out of pocket expenses the Landlords incurred.
14. The Tenants was in possession of the rental unit on the date the application was filed.
15. On October 6, 2021, the Landlords gave the Tenants a first, voidable N5 notice of termination, alleging that the Tenants had violated the Condominium smoking rule. Therefore, the Landlords was allowed to give the Tenants a second, non-voidable N5 notice of termination under section 68 of the *Residential Tenancies Act, 2006 (Act)*.
16. On October 15, 2021, the Landlords gave the Tenants a second N5 notice of termination. The notice of termination contains the following allegations:
 - a) Tenants violated the Condominium Smoking rule
 - b) Tenants violated the Condominium rule by erecting drapes and a blanket enclosure on the balcony of the rental unit and storing loose miscellaneous items on the balcony.
17. This conduct substantially interferes with a lawful right, privilege or interest of the Landlords, as the Tenants continued to smoke on the balcony and store miscellaneous

loose items on the balcony which resulted in the Condominium Corporation issuing three cease and desist letters to the Landlords and the Tenants.

18. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

N5 Notice of Termination- Substantial Interference

Landlords Evidence

19. The Landlord, Winnie Chang testified that on September 22, 2021, she was notified by email by the Property Manager, that the Tenants were smoking on the balcony. The Property Manager provided the Landlords a photo of the Tenant smoking on the balcony.
20. WC further testified that she emailed the Tenants immediately after receiving the complaint from the Property Manager and the Tenant responded that she would not smoke on the balcony again.
21. WC further testified that on September 27, 2021, the Property Manager sent a final notice to the Landlords that the Tenants had not refrained from smoking on the balcony, and this must cease immediately.
22. WC provided a video that was sent her on September 27, 2021, by the Property Manager, that shows the Tenant on her balcony, smoking a cigarette. She was not sure of the exact date this video was taken by another tenant.
23. WC testified that all photographs and videos were coming to her directly from the Property Manager.
24. The Landlords received a letter from Lash/Condo Law dated October 6, 2021, informing the Landlords that the Tenants continued to smoke on the exclusive use common element being the balcony contrary to a provision of the Condominium Corporation's rules and declaration. The letter demanded that the Landlords reimburse the Condominium Corporation pursuant to a provision in the declaration for the legal fees and disbursements it incurred for advice and a cease-and-desist letter totalling \$666.70.
25. WC testified that the letter dated October 6, 2021, was also sent to the Tenants by Lash/Condo Law. She testified that after the Tenants received this letter the behaviour did not change, and the Tenant continued to smoke on the balcony of the rental unit.
26. The Landlords received a second letter from Lash/Condo Law dated October 15, 2021, informing the Landlords that the Tenants continued to smoke on the exclusive use common element being the balcony contrary to a provision of the Condominium Corporation's rules and declaration. It also states the Tenants erected drapes and put up a blanket enclosure and was storing miscellaneous loose objects on the exclusive use

common element balcony contrary to the Condominium Corporations rules and declaration. The letter demanded that the Landlords reimburse the Condominium Corporation pursuant to a provision in the declaration for the legal fees and disbursements it incurred for advice and a cease-and-desist letter totalling \$666.70.

27. WC testified that the letter dated October 15 2021, was also sent to the Tenants by Lash/Condo Law. She testified that after the Tenants received this letter the behaviour did not change, and she continued to smoke on the balcony of the rental unit and store blankets and miscellaneous loose items.
28. The Landlords provided a photograph taken by another tenant, sometime in October 2021, that was provided to the Landlords by the Property Manager that shows an ashtray with cigarette butts and loose blankets on the balcony.
29. WC testified that after she received the second letter from Lash/Condo Law she issued a second N5 Notice of Termination to the Tenants. At that time the Tenants promised the Landlords that the smoking on the balcony would stop.
30. WC testified that on November 11, 14 and 15 of 2021, the Property Manager sent the Landlords emails that there were further complaints of the Tenants smoking on the balcony.
31. WC testified that on November 29, 2021, she received an email from the Property Manager, advising her that there was a maintenance inspection of the rental unit and she spoke to the Property Manager she was advised that there was a heat pump maintenance inspection on November 29, 2021, and at that time there was a strong smell of cigarette smoke inside the rental unit.
32. WC testified that on December 8 2021 she received a final demand letter from Lash/Condo Law. The Tenants were also sent a copy of this letter from Lash/Condo Law. This letter advised the Landlords that this was a one-time final try to obtain the Landlords and Tenants compliance regarding the Tenants smoking on the exclusive use common element balcony and the Tenants storing miscellaneous loose objects on the balcony. The letter was accompanied by a photograph taken on November 24, 2021. The photograph was of the balcony that showed an ashtray with cigarette butts as well as blankets on the balcony.
33. She testified that she was also notified that if the Tenants did not cease the behaviour that the Condominium Corporation would be starting legal proceedings against the Landlords.
34. The Landlords provided a copy of the Toronto Standard Condominium Corp NO 2479, Smoke Free Environment Rules which state the following:
 - a) Rule 2- Smoking is prohibited in or upon the units, common elements and exclusive use common elements of the Corporation.

- b) Rule 3- Vaping is prohibited in or upon the units, common elements and exclusive use common elements of the Corporation
35. The Landlords provided a copy of the Declaration for Toronto Standard Condominium NO 2479, which states the following:
- a) 3.8- Balconies and Terraces- Only seasonal furniture may be placed on exclusive use balconies and terraces. The balconies and terraces shall not be used for storage. Structures shall not be placed or installed on the exclusive use rooftop terraces unless they are approved by the Board and the Owner has entered into an agreement with the Corporation in accordance with section 98 of the Act authorizing the placement or installation of the structure.
36. The Landlords provided a copy of an Ontario Standard Form of Lease signed by the Landlords and the Tenants on August 5, 2021 and August 6, 2021. The lease states the following:
- a) #10- Smoking- No smoking of any kind including cannabis.
37. WC testified that in August 2022, she received an email from the Property Manager, advising her that there were still many loose items on the balcony. She testified that she emailed the Tenants again and asked them to remove these belongings from the balcony to their storage locker.
38. The Landlords provided a copy of an email dated August 25, 2022, from the Property Manager to the Landlords that states it was brought to their attention that there are items other than season furniture being stored on the balcony, which are exclusive common element. The letter reminds the Landlords that the Rules of Toronto Standard Condominium Corporation No. 2479 specifies that balconies are not to be used for storage of any items. Seasonal furniture is the only item permitted to be kept on the balcony and may be neatly stored there during the winter.
39. She testified that on November 7, 2022, she inspected the rental unit and at that time there was still loose belongings on the balcony that had not been removed by the Tenants.
40. WC testified that after her inspection of the rental unit on November 7, 2022, she emailed the Tenants and requested that the loose items be removed, and the Tenants did not respond to her.
41. WC testified that since the original hearing on December 22, 2022, she has not had any further communication with the Tenants as the application was heard and she was waiting for an order from the Board.
42. She testified that since the matter was heard on December 22, 2022, she has not received any further complaints from the Property Manager or other tenants.

43. She testified that sometime mid January 2023, the Property Manager contacted her and requested an update, which she could not provide as she did not have a final order from the Board.

Tenant Evidence

44. The Tenant, Negar Shakeri testified that she moved into the rental unit in August 2021. In the months of September and October 2021, she received complaints from the Landlords regarding her smoking on the balcony.
45. NS further testified that she did smoke on the balcony in the months of September and October 2021, but did not smoke on the balcony after October, 2021, when there were pictures of her smoking on the balcony.
46. NS testified that she has never smoked inside the rental unit.
47. NS states that after the first complaint by the Landlords everything was resolved, and she does not understand why there were additional letters sent to her.
48. She testified that after the first letter dated October 6, 2021, she received a second letter dated October 15, 2021 and a third letter dated December 8, 2021, that stated she was in violation of the Condominium Corporation's rules and declaration.
49. She testified that she looks after her eighteenth month old nephew four days a week and therefore does not smoke inside or outside the rental unit.
50. NS testified that she moved into the rental unit in August 2021, it took her several months to unpack everything and she put belongings on the balcony so that she could clean her rental unit. These belongings included some towels and blankets. She states that the belongings were removed the same day or the day after she received the complaint from the Landlords.

Analysis

51. I am persuaded by the Landlord's evidence that the Tenants were smoking on the balcony of the rental unit and storing miscellaneous loose items on the balcony of the rental unit, that were not seasonal furniture.
52. If find that the Tenant's substantially interfered with the lawful right, privilege or interest of the Landlords as the Tenant continued to smoke on the balcony and store miscellaneous loose items on the balcony which resulted in the Condominium Corporation issuing three cease and desist letters to the Landlords and the Tenants.

53. I also find that the Tenant's actions have caused the Landlords to be at risk of losing their property within the condo corporation and the Landlords could face further costs and legal proceedings as a result of the Tenant's failure to correct the behaviour.
54. I am satisfied that the Tenants were aware that smoking on the balcony and storing miscellaneous loose items on the balcony was a violation of the Condominium Rules and Declaration.
55. I am not persuaded by the Tenant's testimony that the behaviour ceased after the Tenants were first notified of the issue by the Landlords. There was no evidence before me to suggest that this was the case.

Compensation for Substantial Interference

Analysis

56. Section 88 (1) states a landlord may apply to the Board for an order requiring a tenant or former tenant to pay costs described in subsection (4) if,
 - a) while the tenant or former tenant is or was in possession of the rental unit, the conduct of the tenant or former tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant or former tenant is or was such that it substantially interferes or interfered with,
 - (i) the reasonable enjoyment of the residential complex for all usual purposes by the landlord, or
 - (ii) another lawful right, privilege or interest of the landlord.
57. The Landlords has incurred reasonable out-of-pocket expenses in the amount of \$2000.10. These expenses were incurred as a result of the Tenants not correcting their behaviour of smoking on the balcony and storing miscellaneous loose items on the balcony. As a result of the Tenant's failure to correct the behaviour the Landlords incurred costs transferred to the Landlords by the Condominium Corporation to prepare cease and desist letters to the Landlords and Tenants. The expenses incurred are as follows:
 - a) Letter dated October 6, 2021 in the amount of \$666.70.
 - b) Letter dated October 15, 2021 in the amount of \$666.70
 - c) Letter dated December 8, 2021 in the amount of \$666.70.
58. I am satisfied that the amount of \$2000.10, represents reasonable out of pocket expenses that the Landlords has incurred.

Costs

59. The Landlord's Legal Representative requested legal costs in the amount of \$2500.00, due to the administrative delay with the application being heard and then rescheduled de novo

60. Rule 23.2 of the LTB's Rules of Procedures state the following:

a) A member may exercise discretion to order another party to pay another party's, representation/preparation fees and other out of pocket expenses.

61. While I appreciate that the delay with the application being heard de novo was frustrating for the Landlords, I will not be issuing costs. The Tenants did not engage in unreasonable conduct which caused undue delay or expenses to the Landlords.

Relief from Eviction

62. 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.

63. The Tenant, NS works two jobs in order to pay the bills, rent and food. She states that she has very little money left over each month after paying her bills.

64. She does not drive often and relies on public transportation to get her to and from work. Her rental unit is in close proximity to public transportation and her workplaces.

65. She looks after her 18-month-old nephew four days a week.

66. NS states if she was evicted, she would not be able to find a new rental unit at the current market rents.

67. While I find that there was conduct that substantially interfered with the Landlord's lawful rights, privileges or interests, when I consider the factors above, I find that it would be fair and appropriate to provide the Tenants with an opportunity to correct the behaviour.

68. This order contains all reasons for this decision. No other reasons will be issued.

It is ordered that:

1. The tenancy between the Landlords and the Tenants continues if the Tenants meet the conditions set out below.
 - a) The Tenants will not smoke on the balcony of the rental unit.
 - b) The Tenants will not erect any drapes or blanket enclosures on the balcony or store any miscellaneous loose items that are not considered seasonal furniture on the balcony.

2. The conditions set out in Paragraph 1(a-b), will be in place for a period of one year from the day after this order is issued.
3. If the Tenants fails to comply with the conditions set out in paragraph 1(a-b) of this order, the Landlords may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenants. The Landlords must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenants.
4. The Tenants shall pay to the Landlords \$2000.10, which represents the reasonable out-of-pocket expenses the Landlords have incurred as a result of the substantial interference.
5. The Tenants shall also pay to the Landlords \$186.00 for the cost of filing the application.
6. The Tenants shall pay the total amount of \$2186.10, to the Landlords as outlined below:
 - a) On or before May 1, 2023 the amount of \$125.00
 - b) On or before June 1, 2023, the amount of \$125.00
 - c) On or before July 1, 2023, the amount of \$125.00
 - d) On or before August 1, 2023, the amount of \$125.00
 - e) On or before September 1, 2023, the amount of \$125.00
 - f) On or before October 1 2023, the amount of \$125.00
 - g) On or before November 1, 2023, the amount of \$125.00
 - h) On or before December 1, 2023, the amount of 125.00
 - i) On or before January 1, 2024, the amount of 125.00
 - j) On or before February, 2024, the amount of 125.00
 - k) On or before March 1, 2024, the amount of 125.00
 - l) On or before April 1, 2024, the amount of 125.00
 - m) On or before May 1, 2024, the amount of 125.00
 - n) On or before June 1, 2024, the amount of 125.00
 - o) On or before July 1, 2024, the amount of 125.00
 - p) On or before August 1, 2024, the amount of 125.00
 - q) On or before September 1, 2024, the amount of 125.00
 - r) On or before October 1, 2024, the amount of \$61.10.
7. If the Tenants do not pay the Landlords the full amount owing on the day it becomes due, the Tenants will start to owe interest. This will be simple interest calculated from the day after the payment is due at 6.00% annually on the balance outstanding.

April 27, 2023

Date Issued

Trish Carson

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.