



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

Citation: Ricci v Scheiber, 2023 ONLTB 32826

Date: 2023-04-26

File Number: LTB-L-050116-22

In the matter of: 331 THIRD AVE
SAULT STE. MARIE ON P6C4M3

Between: Chris Ricci Landlord
Sabrina Ricci

And

Melissa Scheiber Tenants
Steve Tomei

Chris Ricci and Sabrina Ricci (the 'Landlord') applied for an order to terminate the tenancy and evict Melissa Scheiber and Steve Tomei (the 'Tenants') because the Tenants have committed an illegal act and because the Tenants has been persistently late in paying the Tenant's rent.

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

The Landlord withdrew their claim for the reasonable out-of-pocket expenses that are the result of the Tenants' conduct that substantially interfered with the Landlord's reasonable enjoyment of the residential complex or another lawful right, privilege or interest.

This application was heard over two days on February 6, 2023 and March 10, 2023. It was heard by videoconference on both days.

The Landlords, their Representative Jordan Nieuwhof, and the Tenants attended both days of hearing.

Determinations:

First Adjournment Request

1. The Tenants requested an adjournment on the first day of the hearing because they did not have adequate time to prepare for the hearing as they only received the notice of hearing on January 20, 2023. The Tenants also stated that they have no access to the Tribunals Ontario Portal so they have not been able to access the Landlord's documents to know the case to be met. The Tenants also sought to obtain legal representation.
2. The Board's records reflect that the notice of hearing was emailed to the Tenant Steve Tomei on January 13, 2023 and mailed to the Tenant Melissa Scheiber ('M.S') on January 21, 2023. The Board's records also reflect that the Landlord's application was mailed to the Tenant M.S on that same date. Pursuant to Rule 3.9 of the Board's Rules of Procedure a document is deemed served the fifth day after mailing.
3. The Landlords filmed themselves placing the first notice of hearing in the Tenant's mailbox on January 19, 2023. That video was introduced into evidence.
4. The Landlord's certificate of service indicates that the N6 and N8 Notice of Termination were left in the Tenants mailbox on August 30, 2022.
5. The Landlord Chris Ricci ('C.R') filmed himself placing the N6 and N8 in the Tenant's mailbox on August 30, 2022. That video was introduced into evidence.
6. The Landlord C.R emailed the Tenants the Landlord's evidence brief on January 29, 2023. That email was entered into evidence.
7. Section 183 of the *Residential Tenancies Act, 2006* directs the Board to adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and to be heard on the matter.
8. The adjournment was denied as the Tenants did have an adequate opportunity to prepare for the hearing and know the case to be met. The notices of termination were served on the Tenants on August 30, 2022. Attached to those notices was a schedule that lists the allegations in detail. The Board mailed the Tenant M.S a copy of the application on January 21, 2023. The Landlord's evidence package was emailed to the Tenants on January 29, 2023. While the Tenants may not have had access to the portal, they were in possession of all relevant documents that the Landlord intended to rely on at the hearing. Additionally, the right to counsel is not absolute and the Tenants had adequate time to seek legal representation.
9. The adjournment was also denied in consideration of the prejudice to the Landlord that would result from an adjournment because of the serious nature of the illegal act allegations.
10. Prior the start of the hearing I explained to the Tenants that the Landlord's case concerned persistent late payment of rent and an allegation that the Tenants had committed an illegal act. Prior to the commencement of the hearing, I read in entirety the Landlord's allegations

from the schedule attached to the N6 notice of termination. This was done to give the Tenant's a further opportunity to know the case to be met.

Second Adjournment Request

11. At the second hearing date the Tenants requested an adjournment until after the conclusion of their criminal case relating to the same alleged facts as the application before me. The Tenant's indicated that they did not want to incriminate themselves by testifying at the hearing.
12. The Tenants had initially raised this concern at the conclusion of the first hearing date, and I indicated to them that they should use the time between the hearing dates to seek legal advice on the issue.
13. The adjournment was denied as the hearing was already underway, this reason for adjournment was not raised when the first adjournment request was made, the criminal proceeding may take months to proceed and it would be unreasonable for the Board's proceeding to wait for an indeterminate amount of time, the presumption of innocence does not apply to Board proceedings, the *Statutory Powers and Procedures Act* does provide some protections against using a witnesses evidence against them in a subsequent criminal proceeding, and the prejudice to the Landlord that would result from an adjournment.

The Application

14. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated as of May 7, 2023.
15. The Tenant was in possession of the rental unit on the date the application was filed.

Illegal Acts - Evidence

16. On August 30, 2022, the Landlord gave the Tenant an N6 notice of termination. The notice of termination alleges that the Tenants committed the illegal act of theft. The allegation is that (1) the Landlord's personal property was stolen from the rental property, and some of it was pawned at a local pawn shop, and (2) that \$4,820.00 was paid to the Tenants to do renovation work and purchase kitchen cabinetry but the work was never completed and the items were never delivered.
17. The Landlord C.R testified that he originally met the Tenants when he was looking for contractors to do renovation work in the rental unit's kitchen. The parties began discussing that contractor work in November 2021, and the Tenants moved into the rental property on February 1, 2022. The understanding was that the Tenants would both live in the rental property and undertake contractor renovation work at the same time. At the time that the Tenants moved in, the rental property was mostly furnished and many of the Landlord's personal belongings remained in the home, including multiple guitars, laptops, and office

equipment and more. There is no evidence before me that those items were given to the Tenants or that the Tenants were permitted to remove them from the rental property.

18. The Landlord C.R testified that the understanding of the parties at the conception of the tenancy was that the living situation would be more of a share situation than a traditional tenancy, with the Landlords retaining access to the home to use the office, shower, do laundry etc. The Landlords have another property in which they live full time, but when in Sault Ste. Marie the Landlords wanted to be able to access the rental unit.
19. On April 15, 2022 the Landlords entered the rental property. The Landlord C.R testified that at that time the Landlords noticed that many of their personal possessions were missing, including the Landlord's four guitars. The Landlords also noticed that none of the renovation work had been completed as promised by the Tenants.

Missing Items

20. The Landlord C.R testified that when he arrived at the rental property on April 15, 2022 he was told by the Tenant M.S that his guitars were safe in the back room. However, when the Landlord went into the back room the guitars were not there. C.D testified that same day he overheard the Tenants tell the police that the guitars must have been stolen from the back room.
21. The Landlord C.R testified that the back room has a lock.
22. On April 26, 2022 the Landlords filed a police report alleging theft over \$5,000.00. The items the Landlords listed as stolen are three electric guitars. The Landlord testified that a fourth guitar was also missing, but it is not listed on the police report.
23. The Landlord C.R testified that the Tenant S.T pawned the guitars to a local pawn shop. A copy of a tag that was found with the guitars and listed the Tenant S.T as the seller, was introduced into evidence. C.R testified that the two guitars that the police were able to recover were returned to him with the tag attached.
24. On June 28, 2022 the Landlords filed another police report as they noticed more items were missing from the rental property. These items include roofing sheets, air compressor, work platform, and a NASA spacecraft print.
25. On August 11, 2022 a criminal code information was sworn against the Tenant S.T for possession of property obtained by crime contrary to section 354(1)(a) of the criminal code.

Renovation Work

26. Text messages between the parties were introduced into evidence that show prior to the tenancy, in November 2021 the parties discussed the Tenants purchasing kitchen cabinets and countertops on behalf of the Landlords and installing those items in the rental property.
27. On November 13, 2021 the Tenant S.T texted the Landlord and indicated that he found cabinets for \$2,200.00 and countertops for an additional \$600.00. Multiple text messages between the parties were introduced into evidence. The Tenant S.T also sent the Landlord photographs of the proposed cabinets.
28. The Landlord C.R testified that he paid the Tenants \$2,800.00 for the cabinets. E-Transfer receipts show that payment was made to the Tenants on November 14, 2021. On December 21, 2021 there is an e-transfer receipt for another \$1,000.00 paid to the Tenants. The Landlord C.R testified that additional money was later paid to the Tenants for labour costs and kitchen appliances. The N6 Notice of Termination lists the total amount the Landlords paid the Tenants for materials and labour for the kitchen renovation as \$4,820.00.
29. After the Landlord did not receive the cabinetry, they searched for the cabinets and countertops on social media and found the exact same photographs of the same cabinets and countertops that the Tenant S.T had sent them. The Landlord C.R testified that he contacted the seller of the items through social media and learned that the items were never sold to the Tenants and had in fact been sold to someone else entirely. Those social media messages were entered into evidence. The Landlords also contacted the person who purchased the countertops and she confirmed that she has them. The purchaser sent the Landlords a photograph of the installed cabinetry in her home. The cabinets look similar to the ones that the Tenants claim to have purchased.
30. On October 5, 2022 a criminal code information were sworn against both Tenants that alleges that the Tenants committed fraud contrary to section 380(1)(b) of the criminal code.
31. Neither Tenant testified.

Analysis

32. Section 61(1) of the Act states that a landlord may give a tenant notice of termination of the tenancy if the tenant or another occupant of the rental unit commits an illegal act or carries on an illegal trade, business or occupation or permits a person to do so in the rental unit or the residential complex.
33. The tenants were both charged with fraud contrary to the criminal code, and the Tenant S.T was charged with possession of property obtained by crime. However, the only illegal act alleged on the Landlord's N6 notice of termination is theft. As a notice of termination cannot be amended, the only illegal act I can consider is what is plead on the N6. I also note that the Tenants' reason for requesting an adjournment of the first hearing date was that they did not know the case to be met. It would be unfair, and contrary to the Act, to

allow the Landlord to include illegal acts in their application not plead on their notice of termination.

34. Section 322(1) of the *Criminal Code* states the following: Every one commits theft who fraudulently and without colour of right takes, or fraudulently and without colour of right converts to his use or to the use of another person, anything, whether animate or inanimate, with intent
- (a) to deprive, temporarily or absolutely, the owner of it, or a person who has a special property or interest in it, of the thing or of his property or interest in it;
 - (b) to pledge it or deposit it as security;
 - (c) to part with it under a condition with respect to its return that the person who parts with it may be unable to perform; or
 - (d) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time it was taken or converted.
35. On a balance of probabilities, I find that the Tenants committed the illegal act of theft in the rental property when they removed the Landlord's guitars and pawned them at the pawn shop. Additionally, I find that the Tenants committed the illegal act of theft in the rental property when they removed roofing sheets, air compressor, work platform, NASA spacecraft print and did not return it to the Landlord.
36. I found the uncontested testimony of the Landlord C.R to be credible as it was offered in a forthright manner. C.R testified that the guitars were in the rental property when the Tenants took possession of it on February 1, 2022. C.R testified that he heard the Tenant M.S say on April 15, 2022 that his guitars were safe in the back room, but that when he went to look in the backroom the guitars were not there. C.R also testified that he then heard the Tenants tell the police that the guitars must have been stolen from the back room.
37. As the Tenants were the only people with access to the rental property, the guitars were stored in a locked room, and the Tenants gave conflicting statements on where the guitars were, it is more likely than not that the Tenants stole the guitars. Additionally, the information from the police and the pawn shop is that the guitars were pawned by the Tenant S.T. The guitars were also returned with pawn shop tags that listed S.T's name on them. That evidence also supports that it is more likely than not that the Tenants stole the guitars.
38. That the Tenants were not charged with theft, but instead S.T was charged with possession of property obtained by crime does not satisfy me that a theft did not occur. The possession of property obtained by crime charge, as opposed to theft, may have been laid by the criminal prosecutors for tactical reasons and the criminal prosecution is a

separate proceeding to this one. Additionally, section 75 of the Act says that the Board may issue an eviction order whether or not the Tenant has been convicted of an offence.

39. I find that the Tenants stole the Landlord's roofing sheets, air compressor, work platform, NASA spacecraft print because they were the only people with access to the property, other than the landlord. Additionally, as I have already found that the Tenants stole the Landlord's guitars, when more property went missing from the rental unit, it is more likely than not that the Tenants also stole that property.
40. The term illegal act is not defined in the Act, but includes a serious violation of federal, provincial, or municipal law. The Board has interpreted acts to be a serious violation if they have the potential to affect the character of the premise or disturb the reasonable enjoyment of the landlord or other tenants. As the Tenants are stealing items from the rental property, I find that affects the character of the premises.
41. I do not find that the Tenant's committed the illegal act of theft by taking \$4,820.00 from the Landlord for the kitchen renovation work and then not completing that work or delivering the items. This is because that money was given willingly to the Tenants. It was not stolen. The Tenants' actions were likely fraud but that is not the illegal act alleged by the Landlord on their notice of termination. I also note that the Landlords paid the Tenants the renovation money prior to the commencement of the tenancy and that likely brings the illegal act outside of the scope of my jurisdiction.

Persistent Late Payment

42. On August 30, 2022, the Landlord gave the Tenant an N8 notice of termination. The notice of termination alleges that the Tenants have persistently paid their rent late. Rent is due on the first. Specifically, the notice alleges:
 1. February 2022 rent was paid February 25, 2022
 2. March 2022 rent was unpaid
 3. April 2022 rent was paid April 4, 2022
 4. May 2022 rent was unpaid
 5. June 2022 rent was unpaid
 6. July 2022 rent was unpaid
 7. August 2022 rent was unpaid
43. The Landlord introduced into evidence a rent ledger that showed when rent had been paid since the notice of termination was served. The rent ledger shows:
 1. September 2022 rent was paid on time.
 2. October 2022 rent was paid on October 2, 2022
 3. November 2022 rent was unpaid

4. December 2022 rent was unpaid
 5. January 2023 rent was unpaid
 6. February 2023 rent was unpaid
44. I accept the uncontested evidence of the Landlord that rent has been paid persistently late by the Tenants. From the first month of the tenancy in February 2022 to February 2023 the Tenant paid their rent late or not at 11 times out of 13 months. While I had some concerns at the hearing about the reliability of the date that the Landlord records a payment as received because they are using the date they collected the rent cheque, the many months of unpaid rent show that the Tenant has been persistently late in paying their rent.

Daily Compensation

45. Based on the Monthly rent, the daily compensation is \$39.45. This amount is calculated as follows: \$1,200.00 x 12, divided by 365 days.
46. The Tenant was required to pay the Landlord \$5,128.77 in daily compensation for use and occupation of the rental unit for the period from November 1, 2022 to March 10, 2023.
47. The Tenants were ordered to pay rent arrears in order LTB-L-042008-22_HR issued on March 9, 2023. Any duplicated rent ordered in this order and order LTB-L-042008-22_HR only needs to be paid once by the Tenant.
48. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
49. There is no last month's rent deposit.

Relief from eviction

50. By the second hearing date order LTB-L-042008 was issued on March 9, 2023. That order terminated the tenancy as of March 31, 2023 unless the order was voided. As that order had the potential to be voided, and results from a different application, the Landlord still proceeded with their application for eviction.
51. 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. This is because of the seriousness of the illegal act and the effect it had on the Landlords. The Landlord C.R testified that he feels his trust was taken advantage of and that he has not been able to sleep well in over a year because of the issues he has experienced with the Tenants. The Landlord S.R testified that she has been unable to work because of the stress caused by the Tenants. S.R also testified that the non-payment and late payment of rent have meant that the Landlords are struggling financially and have had to go without. I have declined to impose relief from eviction in the form of a conditional for the illegal act because of the

seriousness of the act and because the Landlords still have possessions in the rental unit which may continue to go missing. I have declined to impose relief from eviction in the form of a conditional order for the persistent late payment because I do not think that the Tenants would abide by a pay on time order. This is because the Tenants have paid their rent late or not at all 11 times out of the last 13 months. The Tenants have not demonstrated that they can abide by a pay on time order.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated. The Tenant must move out of the rental unit on or before May 7, 2023.
2. If the unit is not vacated on or before May 7, 2023, then starting May 8, 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 8, 2023.
4. The Tenants shall pay to the Landlord \$5,128.77, which represents compensation for the use of the unit from November 1, 2022 to March 10, 2023. Any duplicated rent ordered in this order and order LTB-L-042008-22_HR only needs to be paid once by the Tenant.
5. The Tenant shall also pay the Landlord compensation of \$39.45 per day for the use of the unit starting March 11, 2023 until the date the Tenant moves out of the unit.
6. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
7. If the Tenant does not pay the Landlord the full amount owing on or before May 7, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 8, 2023 at 6.00% annually on the balance outstanding.

April 26, 2023

Date Issued

Amanda Kovats

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.

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In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on November 8, 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.

2023 ONL TB 32826 (CanLII)