



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

Citation: Le v Steeves, 2023 ONLTB 32213

Date: 2023-04-26

File Number: LTB-L-020556-22

In the matter of: MAIN FLOOR UNIT, 3 JANET COURT HAMILTON
ONTARIO L8E4X8

Between: Ha Le Landlord

And

Jennifer Steeves Tenant

Ha Le (the 'Landlord') applied for an order to terminate the tenancy and evict Jennifer Steeves (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 Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises; 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; and because the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

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 June 2 and October 19, 2022.

The Landlord and the Tenant attended the hearing. The Landlord was represented by Sergei Bogdanov, and the Tenant was represented by Shaun Harvey.

Preliminary Issues:

1. The Tenant raised notice validity as a preliminary issue.

2. It was the Tenant's submission that the N12 notice is defective because the address is wrong. The N12 lists the address as "Main Floor, 3 Janet Court, Hamilton, ON L8E 4X8". The Tenant submits that there is no upper or lower unit, and that unit is one single house. It is her position that she entered into an agreement with the Landlord to rent the whole house for \$2,000.00 per month and that agreement did not change.
3. It was the Landlord's position that a new unit and a separate tenancy was created as early a few months after the Tenant moved in and certainly no later than March 1, 2019.
4. The evidence before me is that the tenancy began on or around September 1, 2017. The Tenant entered into an agreement with the Landlord to rent the whole house for \$2,000 per month. The lease agreement includes an occupant ("JR"), who the Tenant has identified as a roommate.
5. Soon after moving in, the Tenant installed a wall separating the upstairs from the downstairs. The occupant JR lived downstairs; the Tenant lived upstairs.
6. The wall appears to have been sturdy enough to separate the two units, though it was not up to code. I take some assistance from a document entered into evidence by the Tenant. This is Inspection Order 41614-2 from the Hamilton Fire Department following an inspection carried out by Investigator R. Smy on May 27, 2022. The Inspector describes the dwelling as follows:

"This one story plus basement combustible building occupied as a residential duplex occupancy with one self-contained, 3 bedroom unit on the 1st floor level and one self-contained, 1 bedroom unit on the basement floor. Each unit has a separate means of egress and is equipped with smoke and carbon monoxide alarms outside the bedrooms." [emphasis added]

7. By November 2017 the Tenant had started to pay her share of the rent separately to the Landlord, at a rate of \$1,000.00 per month. JR also paid \$1,000.00 per month separately to the Landlord.
8. In February 2019 the Tenant informed the Landlord that JR would be leaving. She introduced the Landlord to an acquaintance ("CL") who was willing to move into the basement unit.
9. On February 19, 2019 CL signed a Residential Tenancy Agreement with the Landlord to rent the basement unit for \$1,000.00 per month for a tenancy commencing March 1, 2019. The Tenant was present when this agreement was signed and made no objection.
10. The Tenant continued to pay \$1,000.00 per month in rent to the Landlord. When she fell behind in rent, her negotiations with the Landlord for a payback plan all referenced \$1,000.00 per month.
11. At no point was there a written amendment to the Tenant's Rental Tenancy Agreement.

12. Section 202 (1) of the Act requires me to "...ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants." In doing so, I am to consider not only the outward form of a transaction but also the pattern of activities.
13. I find the tenancy agreement between the Landlord and the Tenant is for the rental of the main floor unit at 3 Janet Court, with a monthly rent of \$1,000.00. I say this because it is clear that there were two separate units; and that the Tenant in fact created the separation. The downstairs unit was for the exclusive use of the individual living there, for which they paid rent directly to the Landlord; and the upstairs unit was for the exclusive use of the Tenant, for which she paid the Landlord directly. The Tenant was aware of the change, which took effect within a few months of the initial tenancy and continued for several years. She did not contest it until presented with the Landlord's notice of termination. She benefitted from the change to the degree that she was not held accountable for \$2,000.00 per month when she fell behind in rent.
14. For all of the above, I find the notice was not defective based on any error in the address and that the Landlord's application for termination based on her intention to use it for her own residential purposes may proceed on its merit.
15. The Tenant also submitted that the N5 and N6 Notices were invalid. It was her position that a voidable and a non-voidable notice cannot be served at the same time.
16. It was the Landlord's submission that nothing prevents a landlord from giving two separate notices arising from the same facts. The determinative question is whether or not the notices are so overlapping or lacking in clarity as to cause substantial confusion for the Tenant in terms of not being able to determine what actions and options are available to her to avoid termination of the tenancy. The Landlord served two separate notices with particulars specific to the applicable test for each notice. For example, the N6 Notice makes explicit reference to the alleged illegality of the Tenant's actions and cites the relevant legislation. I say with while making no determination on the merit of the claims therein.
17. For all of the above, I find the N5 and N6 notices are not defective for any confusion or lack of clarity.

Determinations:

Notices of Termination

18. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated, and the Tenant must move out of the unit by May 31, 2023.
19. On November 18, 2021 the Landlord gave the Tenant an N12 notice of termination with the termination date of January 31, 2022.

20. The Landlord in good faith requires possession of the rental unit for the purpose of their own residential occupation for a period of at least one year.
21. The Landlord compensated the Tenant an amount equal to one month's rent by January 31, 2022.
22. Having determined the application based on the N12 Notice, it is not necessary for me to consider the merits of the N5 and N6 Notices.

Application Fee, Daily Compensation and Rent Deposit

23. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
24. 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
25. The Tenant was required to pay the Landlord \$10,191.78 in daily compensation for use and occupation of the rental unit for the period from December 14, 2021 to October 19, 2022.
26. The Tenant shall also pay the Landlord compensation of \$32.88 per day for the use of the unit starting October 20, 2022 until the date the Tenant moves out of the unit.
27. Based on the monthly rent, the daily compensation is \$32.88. This amount is calculated as follows: \$1,000.00 x 12, divided by 365 days.
28. The Landlord collected a rent deposit of \$1,000.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$72.17 is owing to the Tenant for the period from August 15, 2017 to October 19, 2022.
29. 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.
30. 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 not be unfair to postpone the eviction until May 31, 2023 pursuant to subsection 83(1)(b) of the Act.

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 31, 2023.
2. If the unit is not vacated on or before May 31, 2023, then starting June 1, 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 June 1, 2023.
4. The Tenant shall pay to the Landlord \$9,119.61, which represents compensation for the use of the unit from December 14, 2021 to October 19, 2022, less the rent deposit and interest the Landlord owes on the rent deposit.
5. The Tenant shall also pay the Landlord compensation of \$32.88 per day for the use of the unit starting October 20, 2022 until the date the Tenant moves out of the unit.

April 26, 2023

Date Issued

Amber Neumann

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 of the Tenant expires on November 31, 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.