



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

Citation: Kharitonov v Thorne, 2023 ONLTB 33113

Date: 2023-04-21

File Number: LTB-L-041735-22

In the matter of: 341 FERNDALE DR S
BARRIE ON L4N9Y6

Between: Mark Kharitonov Landlords
Yana Kharitonov

And

Chris Thorne Tenants
Katarina Thorne

Mark Kharitonov and Yana Kharitonov (the 'Landlords') applied for an order to terminate the tenancy and evict Chris Thorne and Katarina Thorne (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 Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex used the rental unit or the residential complex in a manner that is inconsistent with use as a residential premises and that has caused or can be expected to cause significant damage.

This application was heard by videoconference on January 4, 2023. The first named Landlord, their representative, E. Vasileva, the Landlords' witness, M. Bulat ('M.B'), and the second named Tenant attended the hearing.

Determinations:

1. As explained below, the Landlords have proven on a balance of probabilities the grounds for the application. However, I do not find that the tenancy shall be terminated. The application is granted, and the tenancy will continue subject to the conditions set out in this order.
2. The Tenants were in possession of the rental unit on the date the application was filed.
3. At the outset of the hearing, the Landlords chose to withdraw the N7 notice of termination. The remainder of the hearing was focused on the N5 notice of termination.

4. On June 14, 2022, the Landlords gave the Tenants a first, voidable N5 notice of termination. Therefore, the Landlords were allowed to give the Tenant a second, non-voidable N5 notice of termination under section 68 of the *Residential Tenancies Act, 2006* (Act).
5. On July 19, 2022, the Landlords gave the Tenants a second N5 notice of termination by mail. The noticed was deemed served as of July 24, 2022. The notice of termination contains the following allegations:
 - On July 11, 2022, the Landlords received a conditional offer on the property. There was a home inspection scheduled for July 13, 2022.
 - On July 13, 2022, the home inspection was completed on the property.
 - On July 18, 2022, the Landlord received information that the offer was withdrawn due to the inspection not being passed. The reasons for the failure was due to restricted access to parts of the rental unit and the excessive storage of belongings.
6. The Landlords are attempting to sell the rental unit and the common element between the first and the second N5 notice of termination was the condition of the rental unit and that the Tenants are storing excessive amounts of personal belongings, which is preventing the Landlord from obtaining a buyer for the property.
7. During the hearing the Landlords relied on photos of the rental unit that were taken by the home inspector on July 13, 2023 and called M.B- who was the potential purchaser from the July 11, 2022 offer.
8. In addition to the photos, during the hearing we went on a 'virtual' tour of the rental unit. The Tenant used the device that she was participating in the hearing with to take us to specific points of interest in the rental unit. The Tenants did not overly contest the condition of the rental unit. However, provided an explanation as to why there are excessive amounts of belongings stored in the rental unit.
9. Based on the evidence I am satisfied that as of the date of the hearing, the Tenants are storing an excessive amount of personal belongings (combustibles) in the rental unit and the condition of the rental unit does substantially interfere with a lawful right, privilege or interest of the Landlord.
10. That being said, for the following reasons I do not find that the Landlords are entitled to an eviction order.

ANALYSIS

11. The Landlords say that as a result of the condition of the unit they are unable to attract a suitable purchaser, which substantially interferes with a lawful right, privilege, or interest. However, the evidence and report from the home inspection suggests that the reason for

the home inspection not passing and the prospective purchaser pulling their offer was due to restricted access from parts of the rental unit, not the amount of clutter.

12. The Tenants say that they are not hoarding. The female Tenant is a single mom with 2 young children and the male Tenant is her dad who resides with her. She testified that she recently had to move items that were being stored in her mother's basement to the rental unit. That at the end of January 2023 her mother was going to be assisting her and moving the belongings to a storage unit. Most of the personal belongings are clothes for her and her children, their toys- etc.
13. On this application, the Landlords interests are the condition of the rental unit and retuning it to a functional state of 'ordinary cleanliness'. However, that can be achieved not just by an eviction order. In this circumstance- I find there is utility in addressing their concerns by a conditional order. I say this because at the hearing the Tenants showed interest in decluttering the rental unit through getting assistance with family members and obtaining a storage unit. In an effort to preserve the tenancy, I am imposing a conditional order subject to section 78 of the Act.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. There is no last month's rent deposit.
16. 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 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 Landlords and the Tenants continues if the Tenants meet the conditions set out below.
2. The Tenants shall comply with notice of entries that are in accordance with the Act and shall not interfere with a potential sale of the property.
3. By no later than May 20, 2023, the Tenants shall ensure that the rental unit is free from clutter.
4. After May 20, 2023, the Tenants shall ensure that at all times, the amount of combustibles in their rental unit does not constitute a safety or health hazard in the opinion of any municipal government department including Barrie Fire Services.
5. If the Tenants fail to comply with the conditions set out in paragraphs 2 to 4 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.

6. The Tenants shall pay to the Landlords \$186.00 for the cost of filing the application.
7. If the Tenants do not pay the Landlords the full amount owing on or before April 26, 2023, the Tenants will start to owe interest. This will be simple interest calculated from April 27, 2023 at 6.00% annually on the balance outstanding.

April 21, 2023
Date Issued

Curtis Begg
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.