



**Order under Section 69 / 88.1
Residential Tenancies Act, 2006**

Citation: SummerCo Properties Inc. v Mcrae, 2023 ONLTB 18745

Date: 2023-04-17

File Number: LTB-L-010062-22

In the matter of: 4, 353 VICTORIA RD N
GUELPH ON N1E5J6

Between: SummerCo Properties Inc. Landlord

And

Wendy Mcrae Tenant

SummerCo Properties Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Wendy Mcrae (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 Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

SummerCo Properties Inc. (the 'Landlord') applied for an order requiring Wendy Mcrae (the 'Tenant') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's conduct or that of another occupant of the rental unit or someone the Tenant permitted in the residential complex. This conduct substantially interfered with the Landlord's reasonable enjoyment of the residential complex or another lawful right, privilege or interest.

This application was heard by videoconference on November 3, 2022.

The Landlord's Agent, M. Mcinnis and the Landlord's Legal Representative, J. Roussy and the Tenant attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the. Therefore, the tenancy continues subject to the conditions set out below.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On February 1, 2022, the Landlord gave the Tenant a first, voidable N5 notice of termination. The allegations contained in the first N5 are as follows:

2023 ONLTB 18745 (CanLII)

- the Tenant sent a text message to the Landlord that threatened to damage the unit with water and cause moisture problems
 - Tenant covered the wiring in the bedroom ceiling junction box and the kitchen junction box with duct tape instead of a proper junction box cover.
 - Wire connectors were not on wires in the bedroom and kitchen leaving exposed wires
 - The circuit breaker was turned off.
 - The Tenant plugged the Laundry dryer into an improper receptacle in the kitchen that is not rated to be used for a dryer
 - The above actions can result in a shock hazard or fire hazard.
4. Therefore, the Landlord was 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 February 16, 2022, the Landlord gave the Tenant a second N5 notice of termination. The notice of termination contains the following allegations:
- The Tenant used the washer and the water discharge from the washer backed up into another unit's kitchen sink. The dryer was plugged into a receptacle not rated for use by a dryer and the dryer was also being vented out of the apartment window. The Tenant does not have authorization to use a washer and dryer in the unit. This occurred on both February 13, 2022 and February 14, 2022.

Landlord's evidence

6. The Landlord's agent, M. McInnis testified that as a result of the Tenant's use of her washing machine in her rental unit and it being drained in her sink, it caused damage to another unit as it backed up into another unit's sink. He testified that the receptacles in the kitchen, where the Tenant has both the washer and the dryer plugged in, are not rated for such appliances and because of this, it is a safety hazard. He testified that the Tenant is not allowed to use a washer and dryer in the unit.
7. The Tenant did not contest the allegations in the 2nd N5 notice of termination. She testified that she has a full size washer and dryer in the unit and that it drains into the sink. She testified that she continues to use the washer and dryer in the unit.
8. Based on the evidence before me, on a balance of probabilities, that the Tenant has substantially interfered with the reasonable enjoyment and lawful right, interest of privilege of the Landlord or another Tenant. It is undisputed by the Tenant that she uses a washer and dryer in the unit. I accept the evidence of the Landlord that this presents a safety risk to the Tenant and other tenants in the building, as the receptacles are not rated for these machines. I also accept that by the Tenant draining the washer into her sink, it has caused a back-up in another unit. I accept the Landlord's testimony that draining the washer into the sink will and did cause debris from the washer to cause the back up.

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

Compensation for substantial interference

10. The Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex substantially interfered with the reasonable enjoyment of the residential complex by the Landlord or another lawful right, privilege or interest of the Landlord by removing the bedroom ceiling fan and covering the receptacle with duct tape and failing to maintain the wire connectors on the wires resulting in exposed wires, on or around January 14, 2022.
11. The Landlord has incurred reasonable out-of-pocket expenses of \$214.50. These expenses were incurred as a result of the substantial interference. The Tenant removed the ceiling fan in the bedroom and after that the several receptacles did not work. An electrician attended the unit and discovered that the ceiling receptacle was covered with duct tape and that wire connectors were not on the wires leaving them exposed. The cost of the electrician visit was \$214.50.
12. Relief from eviction
13. The Tenant has lived in the unit with her daughter since 2019. Although the Tenant stated at the hearing that she would continue to use the washer and dryer in her unit, once she became aware of the potential consequences of doing so, she testified that she would stop using the washer and dryer.
14. The Landlord is seeking an order for eviction, submitting that the Tenant, by her own testimony, stated that she won't stop using the washer and dryer.
15. 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. I am satisfied that the Tenant will abide by the conditional order set out below in order to maintain her tenancy.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
 - a) The Tenant shall immediately stop using the washer and dryer in her rental unit and shall not, in the future, use a washer and dryer in her rental unit.
2. If the Tenant fails to comply with the conditions set out in paragraph 1 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.

3. The Tenant shall pay to the Landlord \$214.50, which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the substantial interference.
4. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
5. The total amount the Tenant owes to the Landlord is \$400.50.
6. If the Tenant does not pay the Landlord the full amount owing on or before May 20, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 21, 2023 at 6.00\$ annually on the balance outstanding.

May 9 2023
Date Issued

Emily Robb _____
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.