



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

Citation: Andy's Apartments Ltd v Bilodeau, 2023 ONLTB 30395

Date: 2023-04-11

File Number: LTB-L-021153-22

In the matter of: 501, 34 LAUREL ST
WATERLOO ON N2J2H2

Between: Andy's Apartments Ltd Landlord

And

Jean Bilodeau Tenant

Andy's Apartments Ltd (the 'Landlord') applied for an order to terminate the tenancy and evict Jean Bilodeau (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.

This application was heard by videoconference on March 22, 2023.

The Landlord Ali Sukhiani and the Landlord's agent Janice Sukhiani and the Tenant attended the hearing.

Determinations and Reasons:

1. The Tenant was in possession of the rental unit on the date the application was filed.
2. The rental unit is one bedroom in a 6 bedroom suite.
3. The tenancy began around March 1, 2019.

First and Second N5 Notices – Substantial Interference

4. The Tenant was served an N5 notice of termination, pursuant to section 64 of the

Residential Tenancies Act, 2006 (the 'Act'), on March 1 2022. That section provides that a landlord may serve notice of termination on a tenant "if the conduct of the tenant... is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant".

5. The N5 notice alleges that the toxic odour coming from the Tenant's has a negative impact on the Landlord and other tenants at the residential complex.
6. Pursuant to subsection 64(3) of the Act the Tenant was given seven days to stop the behaviour complained of. Section 64(3) says: "The notice of termination under subsection (1) is void if the tenant, within seven days after receiving the notice, stops the conduct or activity or corrects the omission."
7. The Landlord testified that the Tenant did not remediate the odour and the strong smell continued, causing complaints from other tenants.
8. Pursuant to section 68(1) of the Act, the Landlord served the Tenant with a second N5 Notice on March 29, 2022. The Landlord's application is based on the second N5 Notice. Accordingly, the Landlord need not prove the truthfulness of the allegations in the first N5 Notice, only that it meets the statutory requirements contained in section 64 of the Act. I am satisfied that it does.
9. I acknowledge it would be prejudicial to a tenant if the allegations in a first N5 Notice were without any foundation and made simply for the purpose of allowing a landlord to serve a second, non-voidable notice pursuant to section 68(1). I am satisfied that is not the case in the matter before me.
10. In the second N5 Notice, the Landlord provided details regarding a continued odour, collection of urine in bottles, storing items in the common areas of the residential complex and theft of the internet router.
11. On the date of the hearing, the Landlord said the internet router issues was rectified and requested to remove it from the pleadings.
12. The Landlord's disclosure package included various documents, photographs and communications.
13. Although this order does not specifically address each piece of evidence individually or reference all of the testimony, I have considered all of the evidence and oral testimony when making my determinations.

The Landlord's Testimony

14. The Landlord takes the position that the Tenant stores urine in bottles in his room and the smell from his room has resulted and continues to result in complaints from other tenants.

The Landlord also said that the Tenant stores excessive amounts of items in the common areas of the residential complex which is a fire hazard as well as impedes other tenants.

15. It was the position of the Landlord that due to the unhygienic nature of the Tenant's room; the complex now has bed bugs and inspections and treatments have occurred on multiple times with a cost to the Landlord in the amount of \$5,000.00. The Landlord says the inspector indicated the source of the problem is the Tenant's room.
16. The Landlord requests termination of the tenancy as he has spoken with the Tenant on several occasions without success. The Landlord said he is not convinced a conditional order would be effective in this circumstance.

The Tenant's Testimony

17. The Tenant asserts the "foul odour" complaint is blown out of proportion. He said that he has a cat and has now taken effort to reduce the smell from the litter box.
18. The Tenant said that he is 62 years old and uses a jar to urinate in throughout the night but disposes of it promptly in the morning.
19. The Tenant alleges that the bed bug issue is not limited to his room and the entire complex has an ant problem.
20. As for the allegation of clutter, the Tenant acknowledges that he has accumulated possession and stores the items in the common areas of the complex. He also said that he would remove them.
21. The Tenant seeks relief from eviction.
22. Based on the evidence before the Board and on a balance of probabilities, I find the Tenant has substantially interfered with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant when he stores excessive possessions in the common areas of the residential complex.

Relief from Eviction

23. As explained to the parties at the hearing, termination of a tenancy is a remedy of last resort; where the landlord's interests can be protected and a tenancy preserved then the Board will customarily grant conditional relief from eviction if in all the circumstances it would not be unfair to do so. I find that the Landlord's interests can be protected by ordering the Tenant to clear the common area of his possession.
24. 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.

25. In making this determination I considered the Tenant's circumstances and his ability and willingness to remove the items in question.
26. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
2. On or before May 31, 2023, the Tenant shall remove all personal possessions from the common areas of the residential complex and maintain the rental unit in an ordinary level of cleanliness.
3. If the Tenant fails to comply with the conditions set out in paragraph 2 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.
4. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing on or before April 30, 2023, he will start to owe interest. This will be simple interest calculated from May 1, 2023 at 6.00% annually on the balance outstanding.

April 11, 2023

Dana Wren

Date Issued

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.