



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

Citation: Thibault v Pilon, 2023 ONLTB 29504

Date: 2023-04-06

File Number: LTB-L-021538-22

In the matter of: 2, 36 ORELL ST
GARSON ON P3L1S3

Between: Gilles Thibault Landlord

And

Andrew Pilon Tenant

Gilles Thibault (the 'Landlord') applied for an order to terminate the tenancy and evict Andrew Pilon (the 'Tenant') because the Tenant 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 7, 2023.

Only the Landlord attended the hearing.

As of 9:48a.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated April 17, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The Landlord served the Tenant with the first N5 Notice of Termination on March 4, 2022 with a date of termination of March 25, 2022. The Landlord served the Tenant with a second N5 Notice of Termination on April 12, 2022 with a Termination date of April 26, 2022.
4. The first N5 notice states that an inspection of the rental unit on March 3, 2022 revealed significant dirt and mess. It states that the white cupboards are stained with yellow greasy streaks, there is mildew on the window, one of the bedrooms is filled with garbage, the toilet is stained yellow, the tub is dirty, and the main bedroom has empty chip bags all over the floor. It also mentioned a strong odor coming from the unit that can be smelled in the hallway.
5. The Landlord testified that he was present for the March 3, 2022 inspection and affirmed that the contents of the notice were true and accurate.

6. The second N5 notice states that an inspection of the rental unit on April 12, 2022 at 10:00a.m. revealed a strong smell coming from the unit that can be smelled in the hallway, a dark brown toilet, and says there is still an issue with garbage in the unit.
7. The Landlord testified that during the April 12, 2022 inspection the smell from the rental unit was very strong. The Landlord testified that the unit can be smelled in the hallway and other neighbours have complained about it. The Landlord also testified that their cleaning staff member has been making complaints about not being able to tolerate the smell.
8. Photographs of the rental unit that were taken on April 12, 2022 were introduced into evidence. The photographs show some disarray in the unit and bags of garbage, but the clutter is not significant. However, the bags of garbage in the unit are likely contributing to the smell being reported by neighbouring tenants and the Landlord's staff. Photographs from a more recent inspection on January 31, 2023 also show dirty dishes that appear to still have remnants of food that could be causing a smell. The Landlord testified that the problems with the Tenant's unit have not improved since the service of the N5 notices.
9. A written statement from Andre Desloges was entered into evidence. Mr. Desloges is a maintenance worker for the rental property. On May 9, 2022 he wrote:

“Every time I go to enter the building, as I approach the main door I can smell foul order and it only gets worse as your approach apartment 2. Today I knocked on the door to speak with Andrew to see if he could organize the clean up of the back yard and the smell was the worse I have smelled.”
10. I accept the uncontested evidence of the Landlord and find on a balance of probabilities that the smell emanating from the Tenant's rental unit substantially interferes with the reasonable enjoyment of neighbouring tenants and the lawful right, privilege or interest of the Landlord. The neighbouring tenants are affected by having to live with the smell, and the Landlord is open to the liability from complaints from neighbouring tenants and his staff.
11. I do not find the state of the toilet or the clutter in the unit to rise to the level of substantial interference as the photographs only showed minimal clutter and I am not satisfied that a dirty toilet is sufficient for a finding of substantial interference with the Landlord's lawful right, privilege or interest.
12. 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. The substantial interference caused by the smell emanating from the Tenant's apartment has not improved since the N5 notices were served. Additionally, the Tenant did not attend the hearing to provide any evidence relevant to my analysis.
13. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
14. The Landlord collected a rent deposit of \$575.00 from the Tenant and this deposit is still being held by the Landlord. If the Landlord has not paid the Tenant interest on that deposit, interest in the amount of \$38.57 is owing to the Tenant for the period from June 1, 2018 to March 7, 2023.

15. 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.

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 April 17, 2023.
2. If the unit is not vacated on or before April 17, 2023, then starting April 18, 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 April 18, 2023.
4. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
5. The Tenant's last month's rent deposit shall be applied to the rent for the last month of the tenancy. The Landlord shall pay the Tenant \$38.57 (subtracting any payments of interest already made to the Tenant) for the period from June 1, 2018 to March 7, 2023.
6. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

April 6, 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.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on October 18, 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.