



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

Citation: Kissoon v Samuel, 2023 ONLTB 29138

Date: 2023-04-05

File Number: LTB-L-070659-22

In the matter of: Main Floor-151 Dooley Crescent
Ajax, ON L1T 4J6

Between: Darren Jadunath Landlords
Krista Kissoon

And

Kim aka Kimberly Samuel Tenant

Darren Jadunath and Krista Kissoon (the 'Landlords') applied for an order to terminate the tenancy and evict Kim aka Kimberly Samuel (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 Landlords or another tenant.

The Landlords also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on March 1, 2023.

Only the Landlords, and the Landlords' Legal Representative Linda Flores attended the hearing. Julie Jison ('JJ') testified on behalf of the Landlords.

As of 9:34 am, 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 Landlords' evidence.

Determinations:

1. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy is terminated.
2. The Tenant was in possession of the rental unit on the date the application was filed.

3. On August 22, 2022, the Landlords served upon the Tenant a first N5 Notice of Termination deemed served that same date with a termination date of September 18, 2022. The notice of termination alleges the following:
 - a) During an inspection of the unit conducted on July 19, 2022, the Landlords noted damage to the unit's bedroom door, living room floor, and fireplace.
 - b) Further during the same inspection, the Landlords determined that the Tenant had altered the locking system of the main entry door and the garage without their permission.
 - c) Further during the same inspection, the Tenant denied the Landlords access to the master bedroom and the dining room despite proper 24-hour notice having been provided.
 - d) On August 11, 2022, the Landlords has received a complaint from the unit below about the smell of smoke emanating from the Tenant's unit.
4. The Landlord Krista Kassoos ('KK') testified that the Tenant has been in the unit since February 2016 and that she rents the main floor unit while JJ rents the lower unit in the residential complex.
5. KK testified that she was present for the inspection of the unit that took place on July 19, 2022 and observed damage to the hardwood floors. Pictures of the damage were entered into evidence and KK testified that the damage was not consistent with normal wear. Further, KK testified that the fireplace grills were missing, and that the fireplace had been painted black.
6. KK also testified that during the inspection, the Tenant refused the Landlords entry into the master bedroom and the dining room despite a proper 24-hour notice of entry having been provided.
7. As such, the Landlords served the Tenant with a first N5 notice of termination on August 22, 2022. In accordance with s. 64(3) of the *Residential Tenancies Act, 2006* (the 'Act') the Tenant stopped the conduct complained of and voided the first N5 notice within 7 days of service of the notice.
8. On October 2, 2022, the Landlords served upon the Tenant a second N5 notice of termination deemed served October 7, 2022 with a termination date of October 23, 2022. The notice of termination alleges the following;
 - a) On September 2, 2022, police arrived at the residential complex and found JJ entering her car where the police mistakenly believed that she was the Tenant, causing JJ to be frightened and distressed.
 - b) On September 3, 2022, the Tenant having been served a 24-hour notice of entry did not permit the Landlords entry into the unit. The Tenant shouted at the Landlords and made accusations and intervened with the Landlords' legal rights and interests.

- c) On September 7, 2022, the Tenant had sent the Landlords a series of text messages accusing the Landlords of trying to illegally enter her unit.
 - d) On September 28, 2022, the Landlords received a complaint from JJ about loud fighting having taken place in the Tenant's unit.
9. KK testified that she had provided the Tenant with multiple notices of entry on August 28 and 29, 2022 and was finally able to settle on an inspection date of September 3, 2022. KK testified that when she arrived at the unit that day the Tenant yelled at her, which led to KK suffering a panic attack. The Tenant did not permit the inspection to be completed.
 10. KK testified that on September 7, 2022 while trying to enjoy time with her family she received a series of aggressive texts from the Tenant, alleging that the Landlords were harassing her.
 11. Both KK and JJ testified about an incident that had occurred at the residential complex on September 28, 2022 whereby JJ, who had been trying to sleep after having worked a night shift, started hearing loud yelling and fighting coming from the Tenant's unit. JJ contacted the Landlords about the issue and the police were called. JJ testified that this incident caused her severe stress and anxiety and affected her ability to sleep that day.
 12. JJ also testified that on September 2, 2022 she had been leaving the residential complex for work when she had been approached by police who had mistakenly thought that she was the Tenant. This incident also caused JJ stress and anxiety.

Analysis & Findings

13. Based on the Landlords' uncontested evidence, I am satisfied on a balance of probabilities that the Tenant has substantially interfered with the Landlords' reasonable enjoyment of the unit and their lawful rights, privileges and interests in accordance with s. 68 of the Act.

Daily Compensation & Costs

14. The Tenant was required to pay the Landlords \$7,803.62 in daily compensation for use and occupation of the rental unit for the period from October 24, 2022 to March 1, 2023.
15. Based on the Monthly rent, the daily compensation is \$60.49. This amount is calculated as follows: \$1,840.00 x 12, divided by 365 days.
16. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
17. The Landlords collected a rent deposit of \$1,700.00 from the Tenant and this deposit is still being held by the Landlords. Interest on the rent deposit, in the amount of \$15.95 is owing to the Tenant for the period from January 6, 2022 to March 1, 2023 .

18. 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.

Section 83 Considerations

19. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

20. The tenancy between the Landlords and the Tenant is terminated. The Tenant must move out of the rental unit on or before April 16, 2023.
21. If the unit is not vacated on or before April 16, 2023, then starting April 17, 2023, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
22. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or after April 17, 2023.
23. The Tenant shall pay to the Landlords \$6,087.67, which represents compensation for the use of the unit from October 24, 2022 to March 1, 2023, less the rent deposit and interest the Landlords owe on the rent deposit.
24. The Tenant shall also pay the Landlords compensation of \$60.49 per day for the use of the unit starting March 2, 2023 until the date the Tenant moves out of the unit.
25. The Tenant shall also pay to the Landlords \$186.00 for the cost of filing the application.
26. As of the date of the hearing, the amount of the rent deposit and interest the Landlords owe on the rent deposit exceeds the amount the Landlords are entitled to by \$(1,529.95).
27. However, the Landlords are authorized to deduct from the amount owing to the Tenant \$60.49 per day for compensation for the use of the unit starting March 2, 2023 to the date the Tenant moves out of the unit.
28. The Landlords or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

April 5, 2023

Date Issued

Jagger Benham
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 17, 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.