



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

Citation: KLH HOUSING CORP. v McRae, 2023 ONLTB 29131

Date: 2023-04-04

File Number: LTB-L-017953-22

In the matter of: 204, 20 SUSSEX ST S
LINDSAY ON K9V5A8

Between: KLH HOUSING CORP. Landlord

And

Mark McRae Tenant

KLH HOUSING CORP. (the 'Landlord') applied for an order to terminate the tenancy and evict Mark 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 number of persons living in the unit on a continuing basis is more than permitted by health, safety or housing standards;

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

This application was heard by videoconference on March 15, 2023. Only the Landlord's legal agent, C. Smith, and witness, H. Payne (HP), attended the hearing. As of 1:30 p.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 on April 15, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N5 Notices

Substantial Interference

3. On February 23, 2022, the Landlord gave the Tenant a first, voidable N5 notice of termination. In sum, the notice of termination alleges that the Tenant and/or guests made excessive noise in the rental unit, the Tenant granted access to the residential complex to trespassed persons, the Tenant did not pick up after his dog and the Tenant permitted guests to use the laundry and smoke in the common areas.
4. HP testified to the events listed in the N5 Notice. HP is the community client services worker of the residential complex and her duties include lease signings and managing tenant behaviour. She stated she received numerous complaints about loud noises coming from the Tenant's unit from the Tenant's guests yelling to get into the building and moving furniture, the Tenant allowing his dog to defecate in the residential complex and not cleaning up after it, the Tenant having trespassed individuals move into the rental unit and the Tenant's guests using the laundry facilities. HP submitted that these incidents substantially interfered with other tenants' enjoyment of the residential complex. Submitted into evidence was a Case Management Report outlining the details of the complaints.
5. Subsection 64 (1) of the Act states:

A Landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by 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. 2006, c. 17, s. 64 (1).

6. Based on the uncontested evidence of the Landlord, I find that the Tenant substantially interfered with other tenants' reasonable enjoyment. As such, I find that the first N5 notice is valid.
7. On March 28, 2022, the Landlords gave the Tenant a second N5 notice of termination. In sum, the notice of termination alleges that the Tenant made excessive noise from the rental unit by partying late at night and slamming doors and allowed trespassed guests to live in the unit. Submitted into evidence was a Case Management Report outlining the details of the complaints.
8. Subsection 68(1) of the Act states that:

A Landlord may give a tenant notice of termination of the tenancy if,

- (a) a notice of termination was given to the tenant under section 62, 64 or 67; and
- (b) more than seven days but less than six months after the notice mentioned in clause (a) was given to the tenant, an activity takes place, conduct occurs or a situation arises that constitutes grounds for a notice of termination under section 60, 61, 62, 64 or 67, other

than an activity, conduct or a situation that is described in subsection 61 (1) and that involves an illegal act, trade, business or occupation described in clause 61 (2) (a). 2006, c. 17, s. 68 (1); 2017, c. 13, s. 12.

9. This section entitles the Landlords to serve a non-voidable N5 if there is another incident that occurs more than seven days but less than six months after the Landlords served the first N5 notice.
10. I accept the uncontested testimony of HP and find that the Landlord proved, on a balance of probabilities, that the Tenant substantially interfered with another tenant's reasonable enjoyment of the residential complex by causing excessive noise and allowing trespassed guests reside in the rental unit.
11. Having found that the Landlord met its burden of proof regarding substantial interference, I will not consider whether the number of persons living in the unit on a continuing basis is more than permitted by health, safety or housing standards.

Relief from Eviction

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.
13. The Landlord submitted that the tenancy cannot continue. HP testified that since the service of the second N5 Notice, the Tenant broke into several mailboxes at the residential complex and stole mail. As of the day before the hearing, he broke into two more mailboxes.
14. In consideration of the foregoing, and the fact that the Tenant did not attend the hearing to testify to his circumstances for me to consider relief from eviction, relief will not be granted.

Expedited Enforcement

15. The Landlord made a request for expedited sheriff enforcement. This request is denied.
16. Section 84 of the Act states:

Subject to clause 83 (1) (b), the Board shall, in an order made under section 69 based on a notice given under subsection 61 (1) that involves an illegal act, trade, business or occupation described in clause 61 (2) (a) or based on a notice given under section 63, 65 or 66, request that the sheriff expedite the enforcement of the order. 2006, c. 17, s. 84.

17. As the application is based on an order pursuant to section 64 and 68 of the Act, the Board does not have jurisdiction to order expedited sheriff enforcement.

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 15, 2023.
2. If the unit is not vacated on or before April 15, 2023, then starting April 16, 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 16, 2023.
4. The Tenant shall 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 15, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 16, 2023 at 5.00% annually on the balance outstanding.

April 4, 2023

Date Issued

Camille Tancioco

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 16, 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.

