



Order under Section 69
Residential Tenancies Act, 2006

Citation: Bondy v Oag, 2023 ONLTB 27974

Date: 2023-03-29

File Number: LTB-L-030946-22

2023 ONLTB 27974 (CanLII)

In the matter of: Main Unit, 1510 PARENT AVE WINDSOR
ON N8X4J7

Between: Chelsea Bondy Landlord

And

Jake Dufault and Mary Oag Tenants

Chelsea Bondy (the 'Landlord') applied for an order to terminate the tenancy and evict Jake Dufault and Mary Oag (the 'Tenants') because:

- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the building have substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord in a building that has three or fewer residential units and the Landlord resides in the building;
- the Tenants have been persistently late in paying the Tenant's rent.

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

This application was heard by videoconference on November 21, 2022.

The Landlord and the Landlord's Legal Representative, B. Dean and the Tenants attended the hearing.

Determinations:

Tenant's request for adjournment

1. The Tenants requested an adjournment because they submit that they did not have time to submit evidence or get legal advice. I asked the Tenants what actions they took to obtain legal advice when they received the notices of termination back in May of 2022. The Tenant said they did not seek legal advice at that time. I asked the Tenants what steps they took to obtain legal advice when they received the Notice of Hearing. The Tenants said that they received the hearing notice only 10 days

before the hearing and since receiving the NOH, they took no steps to obtain legal advice. The Tenants testified that M. Oag arrived home yesterday from taking care of her mother and did not have time to submit evidence or seek legal advice.

2. The Tenant's request to adjourn this matter is denied. The Tenants received the termination notices in June of 2022, 6 months prior to the hearing and took no steps to obtain legal advice, similarly, once they received the Notice of Hearing, they took no steps to obtain legal advice. I find that an adjournment is not appropriate in this circumstance.

L2 Application- N8 Notice of Termination

3. On June 1, 2022, the Landlord gave the Tenants an N8 notice of termination with a termination date of August 31, 2022. The notice alleges that the Tenants have paid rent late nine times between May 1, 2021 and May 1, 2022.
4. Since the notice was served to the Tenants, the Tenants have failed to pay the rent on or before the first of the month every month from June 2022 until the November 2022.
5. The Tenant's did not contest the Landlord's allegation of rent being paid late for the months that are claimed in the notice or the months following the service of the notice. The Tenant's testified that they tried to talk with the Landlord's mother about changing the day the rent was due from the 1st of the month to the 4th of the month, but the Landlord was not willing to deviate from what was in the lease. The Tenant's testified that they have had trouble paying the rent on time due other bills and expenses and find it hard to make a complete payment by the day the rent is due. The Tenants submit that they want to get caught up with the Landlord and move. They also submit that going forward, they can pay rent on the first as they are making more money now.
6. Based on the evidence before me, I find that the Tenants have failed to pay their rent on or before the first day of the month.

N7 Notice of Termination

7. On June 1, 2022, the Landlord served the Tenants with a N7 notice of termination, where the Landlord lives in the same residential complex with 3 or fewer units, that contained the following allegations:
 - On April 5, 2022, between 7pm and 10 pm, loud music was playing
 - On April 8, 2022, at 12:30 am, loud music was playing
 - On April 24, 2022, at 3:00 pm, dog barking continuously for 30 minutes
 - On May 6, 2022 at 2:40 am, dog barked continuously for 15 minutes
 - On May 10, 2022, at 3:00 pm, dog barked continuously for 20 minutes
 - On May 21, at 10:47 pm, the male tenant shoved the Landlord as she was on the way to her car.

Landlord's Evidence

8. The Landlord testified that she resides in the lower basement unit and the Tenant's live above her. She testified that on April 5, 2022, loud music was playing in the Tenant's unit between the times

listed in the N7 notice and that she has a drop down ceiling and the music was so loud that the ceiling was vibrating. She testified that she had to stop working on a work project because she could not concentrate.

9. On April 8, 2022, the Landlord testified that loud music was playing and that she was woken up by the music. She testified that it lasted for a while and she would fall back asleep and jerk back awake due to the loud music.
10. On April 24, 2022, the Landlord testified that around 3pm, her family was visiting, and the Tenants dog barked the entire time and it was difficult to have a conversation. She testified that they decided to leave the unit and continue the visit elsewhere due to the barking.
11. On May 6, 2022, the Landlord testified that she came home from work early as she was not feeling well and planned to sleep. She was awoken at approximately 2:40 am from the Tenant's dog's barking.
12. On May 10, 2022, the Landlord's family was over for a visit around 3 pm, and the Tenant's dog barked the entire time. Due to the barking, the Landlord's visitor left.
13. On May 21, 2022, the Landlord testified that she was on her way to her car at approximately 10:47 pm, the Tenants were out on their back patio area with some friends and the male tenant approached her and began talking about his dog. The Landlord testified that she ignored the Tenant and continued on to her car. The male tenant came from behind the Landlord on her left side and with his right shoulder the male Tenant shoulder checked the Landlord and she stumbled forward. Her immediate reaction was to run. The Landlord testified that she got in her car and drove to work. She testified that she had a difficult time working because she was very anxious. The Landlord testified that she is terrified of the male tenant and has installed an app in her phone that signals for police assistance if she shakes her phone repeatedly. The Landlord testified that she did not call the police because she was scared that things would escalate.
14. The Landlord testified that since the service of the N7 notice, the noise has continued and has gotten more frequent. As an example, she testified that on November 11, 2022, the Tenant dog barked for 6 hours on and off and she could not get her work done. She testified that incidents like this happen at least a couple of times a week.
15. The Landlord submitted a noise log detailing incidents that occurred after the service of the N7 notice.

Tenant's evidence

16. In response to the noise allegations regarding loud music, the Tenants testified that they were playing music, but they didn't know how loud they could play it because they never got a knock on their door from the Landlord indicating that the music was too loud.
17. Regarding the April 8, 2022 allegation, the Tenants testified that the male tenant works day shift, and he is usually in bed by 11:00 pm. The Tenants testified that they don't specifically remember April 8, 2022.
18. Regarding the April 24, 2022 allegation, the Tenants testified that they were both working at the time.

19. The Tenants testified regarding the May 6, 2022 incident that if his dog was barking that late, he would have heard it. He testified that he is light sleeper and would have woken up.
20. The Tenant testified that the allegation on May 21, 2022 did not happen. He testified that he was hanging out on his back patio and the Landlord walked past him and his dog. He testified that he did not engage with the Landlord at all.
21. The Tenant testified that they know their dog does not bark when they are not at the unit as they have cameras set up inside the rental unit. He testified that the dog is not left in a crate, and the dog may bark if he sees someone walk by.

Analysis

22. The N7 notice of termination that was served to the Tenants is pursuant to section 65 of the Residential Tenancies Act, 2006 which states:

Termination for cause, reasonable enjoyment of landlord in small building

65 (1) Despite section 64, a landlord who resides in a building containing not more than three residential units may give a tenant of a rental unit in the building notice of termination of the tenancy that provides a termination date not earlier than the 10th day after the notice is given if the conduct of the tenant, another occupant of the rental unit or a person permitted in the building by the tenant is such that it substantially interferes with the reasonable enjoyment of the building for all usual purposes by the landlord or substantially interferes with another lawful right, privilege or interest of the landlord

23. Based on the evidence before me, on a balance of probabilities, I find that the conduct of the Tenants substantially interfered with the reasonable enjoyment of the building for all usual purposes by the Landlord.
24. Regarding the allegations surrounding the music, the Tenant's testified that they were unaware that the level their music was played at was disturbing the Landlord as the Landlord did not knock on their door to tell let them know. I find that this is a reasonable expectation and would not grant termination on this basis, however, the Tenant testified that after receiving the N7 notice of termination, they continued to play the music at a level that they ought to have known, going forward, substantially interfered with the Landlord's reasonable enjoyment.
25. Regarding the allegations surrounding the dog's barking, the Tenant's testified that they were not home during the dates in the notice but that there dog generally doesn't bark, and they have video set up inside their unit. No videos were submitted as evidence. I prefer the Landlord's testimony relating to the barking and find that the Landlord provided specific details about each date in the notice, including the length of time the barking lasted and what exactly was happening at the time the dog was barking.
26. Regarding the incident alleged on May 21, 2022, the Tenant denied the totality of the Landlord's version of events. The Tenants testified that there were two guests at their unit at the time of this incident. Those guests did not appear at the hearing to provide evidence. As addressed in the Tenant's adjournment request, the Tenants had adequate time to prepare and submit evidence before the hearing but took no action to obtain advice prior to the hearing. I prefer the Landlord's detailed

testimony about this incident. The Landlord was audibly upset as she recalled the incident and I have no reason to question

the Landlord's credibility, I found her testimony to be consistent and reliable.

Daily compensation, rent deposit

27. The Tenants was required to pay the Landlord \$7,939.73 in daily compensation for use and occupation of the rental unit for the period from June 14, 2022 to November 21, 2022.
28. Based on the Monthly rent, the daily compensation is \$49.32. This amount is calculated as follows: \$1,500.00 x 12, divided by 365 days.
29. Since the termination date in the notice of termination, the Tenant paid the Landlord \$3,000.00 in rent.
30. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
31. The Landlord collected a rent deposit of \$1,500.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$21.55 is owing to the Tenants for the period from September 11, 2020 to November 21, 2022.
32. 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.

Relief from eviction

33. The Tenants testified that they live in the unit by themselves. They have a dog and 2 cats in the unit. M.Oag is currently laid off and expects to start work again in January 2023.
34. The Landlord is seeking a standard order.
35. 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. I do not believe that this tenancy can be saved by imposing a conditional order to maintain the tenancy. Regarding N8 notice of termination, I do not find that the Tenant's can afford the rental unit or that their circumstances have changed since service of the notice in such a way that would allow for on time payment going forward. Mr. Dufault testified that he and Ms. Oag are both working, yet Ms. Oag testified that she is currently laid off, and not receiving unemployment benefits. In terms of the N7 notice, I do not believe that a conditional order would save this tenancy, as I am of the view that the relationship between the parties has deteriorated to the point where the tenancy should be terminated. Given the time that has elapsed since the date of the hearing and the issuance of this order, no further delay shall be granted.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before April 10, 2023.
2. If the unit is not vacated on or before April 10, 2023, then starting April 11, 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 11, 2023.
4. The Tenants shall pay to the Landlord \$ 3,418.18, minus any payments made since the date of the hearing, which represents compensation for the use of the unit from June 14, 2022 to November 21, 2022, less the rent deposit and interest the Landlord owes on the rent deposit.
5. The Tenants shall also pay the Landlord compensation of \$49.32 per day for the use of the unit starting November 22, 2022 until the date the Tenants moves out of the unit.
6. The Tenants shall pay to the Landlord \$186.00 for the cost of filing the application.
7. If the Tenants do not pay the Landlord the full amount owing on or before April 10, 2023, the Tenants will start to owe interest on the balance outstanding at a rate of 5.00% annually.

March 29, 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.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenants expires on October 11, 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.