



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

Citation: Tegano v Dagenais, 2023 ONLTB 26307

Date: 2023-03-20

File Number: LTB-L-028201-22

In the matter of: Unit 2, 91 Alice Street
Vanier ON K1L7X7

Between: Steven Tegano Landlord

And

Allison Lynne Warf, Daniel New,
and Sherry Dagenais Tenants

Steven Tegano (the 'Landlord') applied for an order to terminate the tenancy and evict Allison Lynne Warf, Daniel New and Sherry Dagenais (the 'Tenants') because:

- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord in a residential complex that has three or fewer residential units;
- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex have wilfully or negligently caused undue damage to the premises;
- The Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully caused undue damage to the premises and used the rental unit or the residential complex in a manner that is inconsistent with use as a residential premises and that has caused or can be expected to cause significant damage; and
- The Landlord has also applied for an order requiring the Tenant to compensate the Landlord for the damage; for the Tenants to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property.

This application was heard by videoconference on January 5, 2023.

Only the Landlord attended the hearing.

As of 9:34 a.m., the Tenants were 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. For the reasons that follow, the Landlord's application will be granted as the Tenants have impaired the safety of others by causing a fire in the rental unit and overheating the electrical panel and tripping the complex's breaker panel on a daily basis by running electrical extension cords from the common hallway into their rental unit.
2. It was undisputed in the hearing that there are 3 Tenants that have a tenancy at unit 2, 91 Alice Steet.

N7 Notices of Termination

Notice of Termination with Termination Date of May 16, 2022

3. The Landlord's documents show that he served Daniel New ('DN') with an N7 Notice of Termination effective May 16, 2022, which named DN as the only Tenant at 91 Alice Street, and no unit number was contained on the Notice of Termination. The N7 Notice was neither signed nor dated by the Landlord and the Certificate of Service indicates that this Notice was not served on the other Tenants in the rental unit.
4. Section 43(1)(c) of the *Residential Tenancies Act, 2006* (the 'Act') states the following:

43(1) Where this Act permits a landlord or tenant to give a notice of termination, the notice shall be in a form approved by the Board and shall,

 - (a) *identify the rental unit* for which the notice is given;
 - (b) state the date on which the tenancy is to terminate; and
 - (c) *be signed* by the person giving the notice, or the person's agent. [Emphasis added]
5. On the basis of the evidence before me, I find that the N7 Notice of Termination served on DN is invalid as it lacks a complete address of the rental unit and also lacks the signature of the Landlord, as is required by subsections 43(1)(a) and (c) of the Act.
6. As the N7 Notice of Termination containing the termination date of May 16, 2020 fails to identify the rental unit, and is unsigned by the Landlord, I find that it is void and the Board has no jurisdiction to terminate a tenancy on the basis of this notice.

Notice of Termination with Termination date of May 29, 2022

7. The Landlord's documents show that he served Daniel New ('DN'), Sherry Dagenais ('SD') and Allison Warf ('AW') with an N7 Notice of Termination effective May 29, 2022. The Certificate of Service indicates all of the Tenants were served with this Notice of Termination.

Impairment of Safety

8. The Landlord testified that the Tenants' conduct has impaired the safety of other Tenants in the residential complex.

9. The Landlord testified that:

- a) The Tenants have not had electricity in their rental unit in over a year and in order to have electricity supplied to their unit, they have used extension cords from the common hallway of the building into their unit. This has caused the breakers in the building to overheat and trip, requiring the breakers to be reset on a daily basis.
- b) The Tenants caused a fire in February 2022 in the kitchen of the rental unit, causing the building to be evacuated. The fire caused damage to the rental unit and damaged the fire alarms, requiring them to be replaced.
- c) Other tenants in the building fear for their safety as there are daily confrontations between the Tenants and other tenants in the building, and by the Tenants blocking external doors to the building leaving them open allowing non-residents access into the building.

10. Subsection 66(1) Of the Act permits a Landlord to give a tenant notice of termination of the tenancy if,

- a) an act or omission of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant seriously impairs or has seriously impaired the safety of any person; and
- b) the act or omission occurs in the residential complex.

11. Based on the uncontested evidence before me, I find that the Tenants causing a fire in the rental unit seriously impaired the safety of others in the residential complex. I further find that the Tenants running extension cords into the common hallway or corridor of the residential complex, in order to gain access to the building's electricity, has also caused a serious impairment of safety to others as it has regularly overheated the electrical panel on a daily basis, and caused the breaker panel to trip daily, leading to potential fire hazards.

12. The Landlord has also claimed that the Tenants have impaired the safety of others in the building due to threats, their behaviour and leaving the exterior doors open. The Landlord failed to provide and details of these events, no dates or times of such occurrences were provided. The hearsay evidence was provided in the form of letters from other tenants in the building did not indicate times or dates of any alleged incidents.

13. Pursuant to subsection 43(2) of the Act, where a landlord gives a tenant a notice of termination “it shall also set out the reasons and details respecting the termination...” It is a requirement for any application to terminate a tenancy that the notice clearly establish the details about the events that led to the landlord giving the tenant the notice.
14. In *Ball v. Metro Capital Property*, [2002] O.J. No. 5931 (*Ball*), the Divisional Court held that in order to be considered, a claim must have sufficient details and particulars, including dates and times and a detailed description of the alleged conduct complained of, in order to allow the person against whom the claim is made to know the case to be met, to void the notice (if applicable), to be able to decide whether to dispute the allegations, and to prepare for the hearing accordingly.
15. I find that the allegation of “tenants fearing for their safety” do not set out the details with respect to the dates the alleged events/activities took place as required by subsection 43(2) of the Act and the *Ball* case. Therefore, this claim will be dismissed.

Wilful Damage

16. The Landlord seeks to terminate the tenancy of the Tenants due to the damage allegedly caused by the Tenants wilfully setting a kitchen fire.
17. At subsection 63(1) of the Act, states that a landlord “may give a tenant notice of termination of the tenancy ... if the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex, (a) *wilfully causes* undue damage to the rental unit or the residential complex ...” [emphasis added]
18. On an application to the Board, the person who alleges a particular event occurred has the burden of proof to establish that it is more likely than not that their version of events is true. In this application, the burden falls on the Landlord to establish that the Tenants wilfully caused the kitchen fire.
19. Wilful has been defined as intentionally, deliberately, knowingly or voluntarily doing or failing to do something that results in the destruction of property. A tenancy may only be terminated under subsection 63(1) of the Act where it can be found that the Tenants caused the damage wilfully. If the claim is not for wilful damage, but rather for negligent damage to the unit or complex, the proper notice of termination would be an N5 voidable notice of termination, not an N7 notice.
20. The Landlord failed to provide evidence to demonstrate on a balance of probabilities that the fire in the kitchen was wilful, having been set intentionally by the Tenants, entitling them to serve an N7 notice of termination. As no evidence was given to show intentional or wilful behaviour, I find that the Landlord was not entitled to serve a non-voidable N7 notice of termination for this claim. This claim will therefore be denied.

Damage to the Rental Unit and Residential Complex

21. Pursuant to section 89 of the Act, the Landlord sought \$5,000.00 in damages caused by the Tenants to the rental unit and the residential complex.

22. At the hearing, the Landlord advised that they no longer wished to seek reimbursement for the damages claimed. As a result, this claim will be denied.

Substantial Interference in a building with 3 or less units with the Landlord residing on site

23. The Landlord has claimed substantial interference pursuant to subsection 65(1) of the Act. The Act states the following:

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 ... 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.

24. As the Landlord testified that there are six (6) units in the building, I find that this section of the Act does not apply and the Landlord's claim under this section will be dismissed.

Inconsistent Use of the Rental Unit

25. The Act states the following

63(1) ... a landlord may give a tenant notice of termination of the tenancy that provides a termination date not earlier than the 10th day after the notice is given if the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex,

...

(b) uses the rental unit or the residential complex in a manner that is inconsistent with use as residential premises and that causes or can reasonably be expected to cause damage that is significantly greater than the damage that is required in order to give a notice of termination under clause (a) or subsection 62 (1).

26. The Landlord failed to provide evidence to demonstrate that the rental unit was being used in a manner inconsistent with use as a *residential premises*. As the Landlord failed to meet the burden of proof to demonstrate inconsistent use on a balance of probabilities, this claim will be dismissed.

Relief from Eviction

27. The Landlord sought an order terminating the tenancy due to the impairment of safety of the Tenants or other tenants in the residential complex. The Tenants did not attend the hearing to provide evidence of their circumstances and the Landlord was unaware of any circumstances that would cause me to delay or deny an eviction and testified that he had

received text messages from Tenant DN that he had a new apartment and that the Landlord was contacted by a Social Worker on his behalf regarding an apartment.

28. 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.
29. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
30. There is no last month's rent deposit.

It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated, as of March 31, 2023. The Tenants must move out of the rental unit on or before March 31, 2023.
2. The Tenants shall also pay to the Landlord \$186.00 for the cost of filing the application.
3. If the Tenants do not pay the Landlord the full amount owing on or before March 31, 2023, the Tenants will start to owe interest. This will be simple interest calculated from April 1, 2023 at 5.00% annually on the balance outstanding.
4. If the unit is not vacated on or before March 31, 2023, then starting April 1, 2023, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
5. 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 1, 2023. The Sheriff is requested to expedite the enforcement of this order.

March 20, 2023

Date Issued

Heather Kenny

Member, Landlord and Tenants 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.

