



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

Citation: 1420731 Ontario Inc c/o GWL Realty Advisors Residential Inc. v Philpott, 2023 ONLTB 24001

Date: 2023-03-13

File Number: LTB-L-060042-22

In the matter of: 2102, 400 WALMER RD Toronto
ON M5P2X7

Between: 1420731 Ontario Inc c/o GWL Realty Advisors Residential Inc. Landlord

And

Douglas Philpott Tenant

1420731 Ontario Inc c/o GWL Realty Advisors Residential Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Douglas Philpott (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 (N5 notice);
- the Tenant or another occupant of the rental unit has committed an illegal act or has carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential complex (N6 notice);
- the Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex (N7 notice).

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 February 27, 2023.

The Landlord's agents Joan Smith (JS) and Mark MacGregor (MM), the Landlord's representative Faith McGregor (FM) and the Tenant (DP) attended the hearing.

The Tenant did not speak with Tenant Duty Counsel.

Determinations and Reasons:

1. As explained below, the Landlord's application for eviction of the Tenant is denied on the condition that the Tenant complies with the order as detailed below.
2. The rental unit is a 2-bedroom apartment in a multi-unit complex.
3. The Tenant was in possession of the unit when the application was filed.
4. The Tenancy began around September 20, 2020.
5. The Landlord submitted as evidence various documents including; photographs, communications and incident reports.
6. Although this order does not specifically address each piece of evidence individually or reference all of the testimony, I have considered all of the evidence and oral testimony when making my determinations.

Notices of Termination and Allegations

7. The Landlord's application is predicated on an N5 notice of termination, an N6 notice of termination and an N7 notice of termination, served on August 22, 2022 and all containing the same allegations.
8. The Landlord alleges that around May 3, 2022 upon serving the Tenant with proper notice of entry, the Landlord conducted an inspection of the rental unit and reported that the Tenant keeps excessive amounts of combustible material throughout the rental unit which is a safety/fire hazard concern and the unit is in a general state of uncleanliness.
9. JS testified that on or around June 13, 2022, the Tenant left a pot on the stove unattended which caused the fire alarm to activate and the fire department attended the rental unit.
10. JS testified and provided evidence that on or around June 14, 2022, June 22, 2022 and July 26, 2022 she inspected the unit after providing proper notice of entry and on each occasion, the condition of the rental unit had not changed, and in some cases had become more cluttered. JS reviewed a series of photographs and incident reports to support the Landlord's claim.
11. JS also testified that the Tenant was offered various support services to assist the Tenant with bringing the rental unit into acceptable state of cleanliness: Community Care Action Centre, Toronto Public Health and a cleaning service. JS said the Tenant did not seek any of the suggested supports.
12. It was the position of JS that the Tenant has been provided with ample time and community support to bring the rental unit into an acceptable level of cleanliness and the Tenant has not taken steps to improve the rental unit and address his circumstances.

N5 Notice – Substantial Interference

13. The Landlord takes the position that by not addressing the excessively cluttered rental unit, the behaviour of the Tenant has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant. The Tenant's behaviour places the Landlord in a compromising position with obligations to comply with the Fire Protection and Prevention Act and put the Landlord in jeopardy of being charged with offences under this Act as well as the Landlord's maintenance obligations under s.20 of the *Residential Tenancies Act, 2006* (the 'Act').
14. According to the JS, the Tenant did not stop the conduct or activity or correct the omission within seven days after receiving the N5 notice of termination. Therefore, the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the Act.
15. JS said that the behaviour of the Tenant and the state of clutter and uncleanliness affects other tenants and the value of the residential complex. JS said that vacant possession is needed to attend to the maintenance issues. JS said there is now a pest control issue at the rental unit.

N6 Notice – Illegal Act

16. The Landlord takes the position that the Tenant's behaviour in keeping the rental unit is an extreme state of uncleanliness and clutter has the potential to impact the containment of a fire if one were to occur at the rental unit. JS said the fire department has already attended the unit to investigate a smoke-related occurrence and the state of the unit could lead to further emergency issues.
17. JS testified that there is very limited space to move about the rental unit and balcony and should a fire happen, any emergency efforts could be impacted due to the extreme clutter and egress issues.
18. JS also said the Tenant's actions or omissions are in contravention of the Fire Protection and Prevention Act and the Landlord's maintenance obligations under the RTA. The Landlord is exposed to charges and liabilities under s.20 of the Fire Protection and Prevention Act.
19. It was the position of the Landlord that due to non-compliance by the Tenant, should the tenancy be permitted to continue, the Landlord may be in jeopardy of substantial penalties.

N7 Notice – Serious Impairment of Safety

20. It is the position of the Landlord that by keeping the rental unit is an extreme state of clutter and uncleanliness, should a fire erupt, containment of the fire would be negatively impact as first responders would have limited access and manoeuvrability in the rental unit.
21. JS said this would be a serious safety concern for the Tenant and his guests as well and other tenants and employees of the Landlord should a fire occur.

The Landlord's Position

22. As a result of the excessive clutter and extreme uncleanliness of the rental unit and risk to others, the Landlord seeks immediate termination of the tenancy.
23. Relying on *Morguard v. Sasveld*, December 13, 2012 Board file TSL-34659-12, FM says that due to the Tenant's actions and/or omissions, the Landlord may face serious monetary liability.
24. In this case, the Member found that due to the condition of the rental unit which was "so stuffed with stored items and possessions that the Toronto Fire Services department of the City of Toronto is prosecuting both the Landlord and the Tenant for breaches of the Fire Protection and Prevention Act, 1997."
25. In my view, the difference between *Morguard v. Sasveld* and the matter before me is the fact that the Toronto Fire Services inspected the unit, issued an inspection order and subsequently charged the Landlord and the Tenant for failure to comply with the inspection order.
26. There is no dispute in the matter before me that no inspection by Toronto Fire Services has occurred and no order to comply. Essentially the Landlord is asking the Board to terminate the tenancy on potential liability.
27. FM also relies on the Divisional Court decisions in *Musse v. 6965083 Canada Inc.*, 2021 ONSC 1085 (CanLII) and *Furr v. Courtland Mews Cooperative Housing Inc.*, 2020 ONSC 1175 (CanLII) which confirm that serious impairment of safety includes both actual impairment and a real risk of impairment.
28. In this case, the Landlord's N7 notice alleges that the extreme clutter and uncleanliness of the rental unit and the impugned conduct created a real risk of serious impairment of safety.

The Tenant's Position

29. Essentially, the Tenant did not dispute the unacceptable state of his rental unit. The Tenant did not deny that he did not seek the supports suggested by the Landlord.
30. The Tenant said that due to a number of personal circumstances, he let the unit get to a state of clutter and uncleanliness. He said he is aware of the issue and is making strides at dealing with the issue.
31. The Tenant testified that the incident that led to the fire department attending the unit on June 13, 2022 was in isolated incident where he left a pot cooking on the stove and it burnt, causing smoke and triggering the fire department. The Tenant said the fire responder advised that had he opened the balcony door and not the main door, the alarm would not likely have activated. The Tenant said no further action was taken with respect to the fire department nor was the issue of clutter addressed during that call.

32. The Tenant said that he had cleaning support for a short period until she relocated and has sought assistance from a number of young friends. He said he believes he is making progress. No documentary evidence was led to support this proposition.
33. The Tenant said that he has significant volume of memorabilia that he is sorting and disposing.
34. The Tenant said that if he was granted relief unit March 24, 2023, he could bring the rental unit back into acceptable standards.

Analysis

35. Based on the evidence before the Board and on a balance of probabilities, I am satisfied that the Tenant has committed an illegal act within the meaning of s.61(1) of the Act and the nature of the illegal act goes to the character of the use of the rental unit. I am also satisfied that the Tenant's failure to maintain the unit is a state of ordinary cleanliness has substantially interfered with the lawful right, privilege or interest of the Landlord as it has the potential of monetary liability should the rental unit not be brought into acceptable standard as per s. 64 of the Act. Finally, I am also satisfied as per s.66(1) of the Act, that the excessive clutter in the rental unit seriously impairs the safety of everyone in the residential complex as any fire would result in substantial threat to human life, animal life, health and/or property.

Relief from Eviction

36. The Landlord is seeking an 11-day eviction order with expedited enforcement due to the Tenant's continuing behaviour of keeping the rental unit in an extreme state of clutter and uncleanliness.
37. The Tenant is seeking relief to March 24, 2023.
38. Although I have considered the circumstances of the Landlord, I am prepared to allow the Tenant opportunity to bring the unit into compliance. I find the amount of time requested by the Tenant to be more than reasonable and the Landlord has remedy by way of application to the Board based on a breach of the order.
39. I appreciate the Landlord's position that the continued behaviour of the Tenant places others at risk and potential monetary implications for the Landlord. However, I must consider the fact that neither the Landlord nor the Tenant have been put on notice by Toronto Fire Services or any other authority.
40. 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 not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

41. The Tenant was required to pay the Landlord \$15,246.44 in daily compensation for use and occupation of the rental unit for the period from September 23, 2022 to February 27, 2023.
42. Due to any delay with order issuance, the Tenant shall be given until March 31, 2023 to comply with the conditions set out in this order.
43. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The Landlord's application for eviction of the Tenant is denied on the condition that the Tenant brings the rental unit to an acceptable state of ordinary cleanliness.
2. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
3. The Tenant shall discuss with the Landlord any required supports to bring the rental unit to an acceptable state of ordinary cleanliness.
4. The Tenant shall remove from the rental unit and properly dispose any items causing excessive clutter in the kitchen, living room, bedrooms, bathroom, hallway(s) and balcony on or before March 31, 2023.
5. The Tenant may contact the Landlord for progress inspections and/or reports prior to March 31, 2023.
6. If the Tenant fails to comply with the conditions set out in paragraph #4 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.
7. The Tenant shall pay to the Landlord \$12,311.34, which represents compensation for the use of the unit from September 23, 2022 to February 27, 2023, less any monies already paid to the Landlord.
8. The Tenant shall also pay to the Landlord \$186.00 for the cost to file the application.
9. If the Tenant does not pay the Landlord the full amount owing on or before March 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 1, 2023 at 5.00% annually on the balance outstanding.

March 13, 2023

Date Issued

Dana Wren

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.