



Order under Section 69 / 88.1 / 88.2 Residential Tenancies Act, 2006

Citation: Chen v Waite, 2023 ONLTB 22472

Date: 2023-02-27

File Number: LTB-L-051122-22

In the matter of: 183 SILAS BLVD
KESWICK ON L4P2K2

Between: Shu yi Chen Landlord

And

Crystal Mullen and Jason Waite Tenants

Shu yi Chen (the 'Landlord') applied for an order to terminate the tenancy and evict Crystal Mullen and Jason Waite (the 'Tenants') because the Tenants did not pay the rent that the Tenants owes.

AND

Shu yi Chen (the 'Landlord') applied for an order to terminate the tenancy 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 or another tenant.

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

Shu yi Chen (the 'Landlord') also applied for an order requiring Crystal Mullen and Jason Waite (the 'Tenants') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

Shu yi Chen (the 'Landlord') also applied for an order requiring Crystal Mullen and Jason Waite (the 'Tenants') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's conduct or that of another occupant of the rental unit or someone the Tenants permitted in the residential complex. This conduct substantially interfered with the Landlord's reasonable enjoyment of the residential complex or another lawful right, privilege or interest.

These applications were heard by videoconference on January 30, 2023.

The Landlord and the Landlord's representative Adeela Alvez attended the hearing.

As of 1:40 p.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. As explained below, the Landlord has 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 effective March 10, 2023.
2. The Tenants were in possession of the rental unit on the date the application was filed.

N5 Notice of Termination

3. On September 28, 2022, the Landlord gave the Tenants a first, voidable N5 notice of termination deemed served on October 3, 2022. Therefore, the Landlord was allowed to give the Tenants a second, non-voidable N5 notice of termination under section 68 of the *Residential Tenancies Act, 2006 (Act)*.
4. On October 18, 2022, the Landlord gave the Tenants a second N5 notice of termination deemed served on October 23, 2022. The notice of termination contains the following allegations:

Date/Time	Details of the Events
SEPTEMBER 28, 2022 AT 1:00 PM	THE FIRST N5 SERVED PROVIDED YOU A 7-DAY CORRECTION PERIOD. YOU HAVE ACKNOWLEDGED RECEIPT OF THE LANDLORD'S REQUESTS FOR THE PROPERTY KEY; HOWEVER, YOU HAVE FAILED TO COOPERATE.
OCTOBER 15 2022 AT 10:22 AM	ON OCTOBER 15, 2022, A NOTICE OF ENTRY WAS POSTED ON YOUR DOOR. ATTACHED IS A COPY OF THE NOTICE POSTED BY A PROCESS SERVER WHO CAN CONFIRM SERVICE. NO OBJECTION TO THE NOTICE WAS RECEIVED FROM YOU ON AND AFTER OCTOBER 15TH.
OCTOBER 17, 2022 AT 2:10 PM	YOU REFUSED TO ALLOW THE LANDLORD'S LOCKSMITH TO CHANGE THE LOCKS OF THE RESIDENTIAL COMPLEX. YOU THREATENED THE LOCKSMITH. YOU REFUSED ENTRY TO THE LANDLORD. YOU ALSO REFUSED TO COOPERATE WHEN THE POLICE ATTENDED AT THE PROPERTY.

5. With respect to the events leading up to the first N5 notice, the Landlord's representative sent a letter to the Tenants on September 19, 2022 requesting a copy of keys to the rental unit, then again following up on September 26, 2022 by email and on September 27, 2022 the Landlord following up by text. The Tenants responded to the text and refused the request for a copy of the key.
6. A notice of entry was posted on the door of the rental unit on October 15, 2022, the Landlord with a locksmith attended the unit on October 17, 2022. Jason Waite, the Tenant answered the door with a large black dog and refused entry into the unit. The Landlord submitted that Mr. Waite was acting aggressive, was swearing and threatened to punch the face of the locksmith if he attempted entry.
7. A recording of the interaction was entered on the Board's record, as per the Landlord's submissions the Tenant was vulgar, threatened violence and refused entry.

8. As per the information as contained in the N5 notice above the Landlord submitted that she still did not have access to the rental unit and followed up with a second N5 notice on October 18, 2022, deemed delivered on October 23, 2022.
9. The actions of the Tenants are contrary to s. 35 (1) of the Act, which provides:

A tenant shall not alter the locking system on a door giving entry to a rental unit or residential complex or cause the locking system to be altered during the tenant's occupancy of the rental unit without the consent of the landlord.
10. Based on the uncontested evidence before me, I find on a balance of probabilities that the conduct of the Tenants substantially interfered with a lawful right, privilege or interest of the Landlord. Specifically, by changing the locks of the rental unit and preventing the Landlord from entering the rental unit to carry out her maintenance obligations in accordance with the Act.

Compensation for unpaid utilities

11. The Tenant failed to pay water costs that they were required to pay under the terms of the tenancy agreement.
12. The Landlord has incurred reasonable out-of-pocket expenses of \$5,510.34 as a result of the Tenants failure to pay water costs. This represents the amounts that had been added to the Landlord's tax bill as owed to the Town of Georgina for the period of December 11, 2016 to December 15, 2022.
13. Invoices documenting the bills the Landlord received and was required to pay on behalf of the Tenants were submitted into evidence.
14. Based on the uncontested evidence before me the Landlord has incurred out of pocket expenses as a result of the Tenants failure to pay water costs as required under the terms of the tenancy agreement.

Compensation for substantial interference

15. The Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex substantially interfered with the reasonable enjoyment of the residential complex by the Landlord or another lawful right, privilege or interest of the Landlord.
16. The Landlord in an attempt to gain access into the rental unit hired a locksmith service, the service of changing locks was not able to be completed by the Tenants' refusal to allow entry into the unit.
17. The Landlord has incurred reasonable out-of-pocket expenses of \$135.60. These expenses were incurred as a result of the substantial interference. Specifically, the Landlord was charged a fee for the locksmith attendance, invoice dated October 20, 2022 was submitted into evidence.

L1 Application

18. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
19. As of the hearing date, the Tenant was still in possession of the rental unit.
20. The lawful rent is \$1,750.00. It is due on the 1st day of each month.
21. Based on the Monthly rent, the daily rent/compensation is \$57.53. This amount is calculated as follows: \$1,750.00 x 12, divided by 365 days.
22. The Tenant has paid \$5,250.00 to the Landlord since the application was filed.
23. The rent arrears owing to January 31, 2023 are \$26,250.00.
24. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
25. The Landlord collected a rent deposit of \$1,750.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
26. Interest on the rent deposit, in the amount of \$159.66 is owing to the Tenants for the period from November 1, 2016 to January 30, 2023.

The Board's Monetary Jurisdiction

27. The amount claimed by the Landlord may exceeds the monetary jurisdiction of the Board. Section 207(1) of the *Residential Tenancies Act, 2006* (the 'Act'), limits the monetary jurisdiction of the Board to that of the Small Claims Court. At this time that amount is \$35,000.00.
28. The Landlord's representative submitted, that should the limitation arise, the Landlord agreed to waive any amount that exceeds the Boards monetary jurisdiction.

Relief from eviction

29. 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.
30. The Tenants failed to attend the hearing to provide evidence of their circumstances and the Landlord's Representative submitted that they are unaware of any circumstances that would cause me to delay or deny an eviction.

31. I have considered the Landlord's request for immediate termination of the tenancy. In arriving at the determination, I find the Tenant's actions towards the Landlord reprehensible, when attempting to assert her right to enter the rental property on October 17, 2022 the Tenant acted brazen, disrespectful and threatened violence. Having regard for this occurrence, the ongoing refusal to provide access to the rental unit, and the vast rental arrears I am not able to come to a different conclusion.
32. I also considered the Landlord's testimony of fear for her personal safety, submissions of suffering both medically and financially and the looming fear of foreclosure on the property if not granted vacant possession.
33. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

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 March 10, 2023.
2. The Tenants shall pay to the Landlord \$28,026.34 which represents the amount of rent owing and compensation up to February 28, 2023, less the rent deposit and interest the Landlord owes on the rent deposit.
3. The Tenants shall also pay the Landlord compensation of \$57.53 per day for the use of the unit starting January 31, 2023 until the date the Tenants move out of the unit.
4. The Tenants shall pay the Landlord reasonable out-of-pocket expenses of \$5,510.34 for utility (water) costs.
5. Tenants shall also pay to the Landlord \$135.60 for compensation arising from substantial interference.
6. If the Tenants do not pay the Landlord the full amount owing on or before March 10, 2023, the Tenants will start to owe interest. This will be simple interest calculated from March 11, 2023 at 5.00% annually on the balance outstanding.
7. If the unit is not vacated on or before March 10, 2023, then starting March 11, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
8. 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 March 11, 2023.

February 27, 2023
Date Issued

 Alicia Johnson
 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 expires on September 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.

*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

Schedule 1
SUMMARY OF CALCULATIONS

A. Amount the Tenants must pay

Rent Owing To February 28, 2023	\$33,250.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$5,250.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
Less interest that the Tenants are entitled to	- \$159.66
Total the Tenants must pay	\$28,026.34
Plus daily compensation owing for each day of occupation starting January 31, 2023	\$57.53 (per day)