



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

Citation: paral v List, 2023 ONLTB 20863

Date: 2023-02-21

File Number: LTB-L-046903-22

In the matter of: UNIT #3, 398 SANDYS STREET
Chatham ON N7L4C9

Between: Paulo Sousa Landlord

And

Brian List Tenant

Paulo Sousa (the 'Landlord') applied for an order to terminate the tenancy and evict Brian List (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 Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises; and
- 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.

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

The Landlord also applied for an order requiring the Tenant 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 caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

The Landlord also applied for an order requiring the Tenant 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.

This application was heard by videoconference on February 6, 2023.

Only the Landlord and the Landlord's legal representative, Michael Stover, attended the hearing.

As of 3:00 PM, 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 and the claim for compensation in the application. Therefore, the tenancy is terminated and the Tenant shall pay the Landlord compensation.
2. On July 14, 2022, the Landlord gave the Tenant an N7 notice of termination. The notice of termination alleges that the Tenant removed the carbon monoxide detectors and tampered with the smoke detectors in the rental unit on March 23, 2022.
3. I am satisfied, based on the uncontested evidence of the Landlord, that the Tenant tampered with the smoke detectors and removed the carbon monoxide detectors. I am also satisfied that by doing so, the Tenant seriously impaired the safety of himself and the other people residing in the residential complex.
4. On July 14, 2022, the Landlord gave the Tenant an N5 notice of termination. The notice of termination alleges that the Tenant stored refuse and garbage inside the rental unit interfering with pest-control, that the Tenant left dog feces in the yard of the residential complex, and that the Tenant caused damage to the rental unit.
5. Based on the uncontested evidence of the Landlord, I am satisfied that the Tenant caused the damage claimed and engaged in the above-noted behaviour and that the Tenant did not stop the conduct or activity, correct the omission, repair the damage, pay the Landlord the reasonable costs to repair the damage, or make arrangements satisfactory to the Landlord 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 *Residential Tenancies Act, 2006 (Act)*.
6. The Tenant's conduct has substantially interfered with the Landlord's and the other tenants' reasonable enjoyment of the residential complex and the Tenant has caused damage to the rental unit.
7. The Tenant failed to pay waste and water costs that they were required to pay under the terms of the tenancy agreement.
8. The Landlord will incur reasonable out-of-pocket expenses of \$649.41 as a result of the Tenant's failure to pay the waste and water costs.
9. The Tenant, another occupant of the rental unit or a person whom the Tenant permitted in the residential complex wilfully or negligently caused undue damage to the rental unit or residential complex. More specifically, the carpeting throughout the rental unit has been damaged beyond repair by food waste and cigarette burns. In addition, the carbon monoxide detectors were removed and needed to be replaced.
10. The Landlord will incur reasonable costs of \$2,314.14 to replace the carpet as it cannot be repaired and \$45.15 to replace the carbon monoxide detectors.

11. The Tenant was required to pay the Landlord \$3,974.79 in daily compensation for use and occupation of the rental unit for the period from July 27, 2022 to February 6, 2023.
12. Based on the monthly rent, the daily compensation is \$20.38. This amount is calculated as follows: \$620.00 x 12, divided by 365 days.
13. Since the termination date in the notice of termination, the Tenant paid the Landlord \$4,340.00 in rent.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. The Landlord collected a rent deposit of \$600.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$61.32 is owing to the Tenant for the period from June 1, 2016 to February 6, 2023.
16. 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.
17. 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.

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 March 4, 2023.
2. If the unit is not vacated on or before March 4, 2023, then starting March 5, 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 March 5, 2023.
4. The Tenant shall pay to the Landlord \$2,085.02. This amount represents \$3,008.70 owing to the Landlord for utilities and damage to the rental unit, \$186.00 owing to the Landlord for the cost of filing the application, less \$1,109.68 owing to the Tenant for the rent deposit, rent paid by the Tenant up to February 28, 2023, and interest owing to the Tenant on the rent deposit.
5. The Tenant shall also pay to the Landlord \$20.38 per day for compensation for the use of the unit starting February 7, 2023 to the date the Tenant moves out of the unit.
6. If the Tenant does not pay the Landlord the full amount owing on or before March 4, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 5, 2023 at 5% annually on the balance outstanding.

February 21, 2023
Date Issued

 Richard Ferriss
 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 September 5, 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.