



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

Citation: Greater Sudbury Housing Corporation v Migwans, 2023 ONLTB 20361

Date: 2023-02-16

File Number: LTB-L-016759-22

In the matter of: 308, 166 LOUIS ST
SUDBURY ON P3B2H3

Between: Greater Sudbury Housing Corporation Landlord

And

Carson Migwans Tenant

Greater Sudbury Housing Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Carson Migwans (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 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 7, 2023.

Only the Landlord's Agent Rebecca Osmond attended the hearing.

As of 9:37 a.m., 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. The Landlord's L2 application is based on two N5 notices of termination served on the Tenant based on the allegations that the Tenant's behaviour or the behaviour of someone visiting or living with the Tenant has substantially interfered with another tenant's or the Landlord's reasonable enjoyment of the residential complex and/or lawful rights, privileges or interests. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy.
2. The rental unit is geared to income and is contained within a building with a mixed demographic containing some children and seniors as well as single persons. The residential complex has secured access so that in order to gain entry into the residential complex, individuals would have to "buzz" a resident of the complex to enter.

3. On October 6, 2021, the Landlord served the Tenant with the first Notice to End Your Tenancy (N5 notice of termination) for substantially interfering with another tenant's or the landlord's reasonable enjoyment of the residential complex and/or lawful rights, privileges, or interests with a termination date of October 31, 2021. The Landlord alleged in the notice that on October 1, 2021, a guest of the Tenant made his way to the second floor of the residential complex and slept for a period of time on the floor by the elevators. The guest then went up to the fifth floor until leaving the complex a few hours later. The Landlord's Agent testified that security completed an occurrence report and still photographs taken from the complex's surveillance video cameras detailing the above incident were tendered into evidence.
4. The second N5 notice of termination was served on the Tenant on March 23, 2022 pursuant to section 68 of the *Residential Tenancies Act, 2006* (the '*Act*') as a result of the Tenant's and their guests behaviour and conduct. Section 68 of the *Act* entitles the Landlord to serve a non-voidable N5 notice if there is another incident that occurs more than seven days but less than six months after the Landlord served the first N5 notice. I am satisfied that the Tenant was served with a valid first notice within the meaning of section 68(1) of the *Act*, and the Landlord was entitled to serve notice on which this application is based.
5. With respect to the incidents described in the second N5 notice, the Landlord's Agent testified that on February 24, 2022, a guest of the Tenant was located in the hallway unconscious with drug paraphernalia around him. Security was dispatched to attend to the Tenant's guest and upon viewing footage from the surveillance cameras, it was determined that the guest had initially come out of the Tenant's rental unit prior to being located unconscious in the hallway.
6. On March 1, 2022, the Landlord provided a letter to the Tenant indicating that a guest of the Tenant by the name of "Jennifer" was trespassed from the building and the Tenant was to cease permitting entry into the residential complex to this individual.
7. On March 3, 2022, the Tenant was observed providing access to persons into the building via a fire exit door located at the side of the building.
8. On March 4, 2022, the Tenant was observed providing access to the trespassed person "Jennifer" into the residential complex.
9. On March 22, 2022, security was dispatched as a male and female guest of the Tenant were loitering in the stairwell. The situation escalated to the point where police were contacted to address the issue.
10. On March 23, 2022, the Landlord provided a letter to the Tenant urging the Tenant to escort their guests in and out of the building.
11. At the hearing, the Landlord's Agent requested that the tenancy be terminated. For the reasons that follow, I find the tenancy between the Landlord and the Tenant is terminated.
12. Subsection 64(1) of the *Act* states:

A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with a

reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.

13. I am satisfied that despite being told by the Landlord that an individual had been trespassed, the Tenant still permitted access into the building to that trespassed individual. Further, the uncontested evidence before me was that the guests of the Tenants were creating disturbances as the Tenant was permitting access into the building by utilizing the fire exits and bypassing the secured entrance. The Landlord's Agent submits that the Tenant's behaviour and conduct put other residents safety at risk and substantially interfered with other residents reasonable enjoyment of the complex and also with the Landlord. The Landlord's Agent submits that despite conversing with the Tenant's community worker regarding the Tenant's behaviour and conduct, it continued.
14. Based on the uncontested evidence and submissions before me, I find that the Tenant and their guests behaviour and conduct has prevented the Landlord from meeting its obligations to ensure other residents can reasonably enjoy the residential complex.
15. The termination of a tenancy is a remedy of last resort and relief should be granted where the tenancy can be saved without overly prejudicing a landlord's interests. In this case, based on the uncontested evidence and submissions, and on a balance of probabilities, I am satisfied that the Tenant's and/or their guest's conduct, as also outlined in the second N5 notice, substantially interfered with other tenants' or the Landlord's reasonable enjoyment of the residential complex, and/or lawful rights, privileges or interests.
16. The Landlord also incurred the cost of \$186.00 to file this application and is entitled to reimbursement of that cost.

Relief from eviction:

17. The evidence before me was that the Tenant's rental unit is geared to income and that the Tenant has resided in the rental unit since August 1, 2021. The Landlord's Agent submits that the Tenant has continued the behaviour despite the N5 notices and also despite communications with the Tenant's community worker. The Landlord's Agent was not aware of any further factors to consider with respect to relief of eviction.
18. Considering the Tenant's behaviour and conduct post service of the N5 notices of termination, I find that the Tenant would be unable to comply with a conditional order and issuing one would further extend the interference with the reasonable enjoyment of other units. However, due to the Tenant being in a rent geared to income rental unit, providing some additional time for the Tenant would perhaps benefit them in securing alternate accommodations. Given the circumstances, 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 postpone the eviction until February 28, 2023 pursuant to subsection 83(1)(b) of the *Act*.
19. This order contains all of the reasons in this matter and no further reasons will be issued.

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 February 28, 2023.
2. If the unit is not vacated on or before February 28, 2023, then starting March 1, 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 1, 2023.
4. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing on or before February 28, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 1, 2023 at 5.00% annually on the balance outstanding.

February 16, 2023

Date Issued

Heather Chapple

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 1, 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.