



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

Citation: SHORECREST ARMS LIMITED C/O GOSSNER & HORNAR MANAGEMENT LIMITED v Cargill, 2023 ONLTB 20697

Date: 2023-02-13

File Number: LTB-L-048032-22

In the matter of: 109, 100 KEEWATIN AVE
TORONTO ON M4P1Z8

Between: SHORECREST ARMS LIMITED C/O GOSSNER & HORNAR Management Limited Landlord
MANAGEMENT LIMITED

And

Kenneth Cargill

Tenant

SHORECREST ARMS LIMITED C/O GOSSNER & HORNAR MANAGEMENT LIMITED (the 'Landlord') applied for an order to terminate the tenancy and evict Kenneth Cargill (the 'Tenant') because 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. And, because 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.

This application was heard by videoconference on February 8, 2023. The Landlord's legal representative, David Ciobotaru, the Landlord's employee, Ovidiu Hornar, and Detective Constable Jonathan Chan attended the hearing. As of 1:37pm, 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 will be terminated and the sheriff will be required to expedite the enforcement of the eviction. The Tenant will also be ordered to pay daily compensation starting the day after the termination date in the Landlord's notice of termination.
2. The Tenant was in possession of the rental unit on the date the application was filed and the Tenant was still in possession of the rental unit as of the date of the hearing.
3. On August 23, 2022, the Landlord gave the Tenant an N6 notice of termination. The termination date in the notice is September 15, 2022. The notice of termination alleges that on August 5, 2022 at approximately 12:15pm the Landlord entered the Tenants unit and discovered a firearm in plain site on the Tenant's couch and that there were piles of cigarette butts on the floor, empty alcohol bottles and garbage with food rotting. The Landlord called the police regarding the issue with the firearm they saw.
4. According to Detective Constable Jonathan Chan of the Major Crime Division of the Toronto Police Services, when police arrived on site of the Tenant's unit at approximately 3:00pm on August 5, 2022 they found what appeared to be a handgun resting on the arm of the Tenants couch. They also saw other firearms and thousands of rounds of ammunition. Shortly thereafter, the police then sought and were granted a warrant to fully search the unit. The police seized a total of 16 guns including 4 pellet guns, shot guns, assault rifles, revolvers and handguns and also over 8,000.00 rounds of ammunition. Neither the guns nor the ammunition were safely locked up and secured. They were throughout the Tenants unit.
5. Detective Constable Jonathan Chan further testified that there was an increased safety concern on the basis that the rental unit is located on the ground level and that the windows were open in the unit which made access to the visible firearms and ammunition easier as someone could easily cut the screen on the windows and enter the unit. That there is an epidemic of gun violence in the City of Toronto and that criminals will do anything to get them and it would not be difficult to break into this unit to get it. The officer also noted thousands of cigarette butts extinguished on the floor and on the coffee table in the unit.
6. Ovidiu Hornar testified that the Tenant had not paid rent in about 8 months and that they had tried getting a hold of the Tenant without success. There had been several other tenants in the complex who had passed away in their units and they were found sometime after the Landlord had received complaints of bad smells emanating from their units. Since they had not heard from the Tenant and they were in considerable arrears and there was a smell coming from the Tenants unit, they entered the unit to check on the Tenant's wellbeing. It was after they opened the door that they could see a gun in plain sight on the Tenants couch and no sign of the Tenant so they called the police. Other tenants in the small 34-unit residential complex expressed concern and fear with the police presence at the rental property.

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7. On a balance of probabilities, I find that the Tenant committed an illegal act in the rental unit and that this illegal act has a negative impact on the character of the residential complex due to the number and nature of the firearms and ammunition that were seized in the unit. They were not securely stored and they were easily accessible to the public when they left their windows open which posed a serious safety risk to other residents in the complex.
8. On August 23, 2022, the Landlord also gave the Tenant an N7 notice of termination. The termination date in the notice is also September 15, 2022. The notice alleges that on August 5, 2022 at approximately 12:15pm, the Tenant seriously impaired the safety of another person in the residential complex on the basis that there was a firearm in plain site when the Landlord entered the unit for a wellness check.

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9. Based on the uncontested evidence before me and on a balance of probabilities I find that the Tenant has seriously impaired the safety of the other residents in the residential complex and the Landlords staff by storing 16 assorted firearms and over 8,000.00 rounds of ammunition in their ground floor unit with the windows open
10. The Tenant was required to pay the Landlord \$4,425.50 in daily compensation for use and occupation of the rental unit for the period from September 16, 2022 to February 8, 2023.
11. Based on the Monthly rent, the daily compensation is \$30.31. This amount is calculated as follows: \$921.98 x 12, divided by 365 days.
12. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
13. The Landlord collected a rent deposit of \$921.98 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$13.53 is owing to the Tenant for the period from January 1, 2021 to February 8, 2023 .
14. 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.
15. 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.
16. Given the seriousness of the issue with the firearms and ammunition not being securely stored and the fact that the Tenant left the unit unattended with the windows upon to their ground floor unit in a building containing 33 other units, in my view, this warrants an expedited enforcement of the eviction.
17. The Tenant did not attend the hearing to make submissions regarding their circumstances to consider and the Landlords evidence was that this conduct has caused other tenants and the Landlords staff to be fearful of their safety.

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 18, 2023.
2. If the unit is not vacated on or before February 18, 2023, then starting February 19, 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 February 19, 2023. The Sherrif is requested to expedite the enforcement of this order.
4. The Tenant shall pay to the Landlord \$3,490.00, which represents compensation for the use of the unit from September 16, 2022 to February 8, 2023, less the rent deposit and interest the Landlord owes on the rent deposit.
5. The Tenant shall also pay the Landlord compensation of \$30.31 per day for the use of the unit starting February 9, 2023 until the date the Tenant moves out of the unit.
6. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.

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February 13, 2023

Date Issued

Terri van Huisstede

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 August 19, 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.

