



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

**Citation:** Menicucci v Commanda, 2023 ONLTB 20149

**Date:** 2023-02-08

**File Number:** LTB-L-015127-22

**In the matter of:** Ground Floor, Unit 1-Front Unit, 924 Dundas Street West  
Toronto ON M6J1W3

**Between:** Gino Menicucci Landlord

**And**

Lonnie Commanda Tenant

Gino Menicucci (the 'Landlord') applied for an order to terminate the tenancy and evict Lonnie Commanda (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.

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. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

This application was heard by videoconference on January 25, 2023.

Only the Landlord and the Landlord's Legal Representative, Oleksandr Pichugin, a attended the hearing.

Joseph Wood attended as a witness for the Landlord.

As of 11:04 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. For the reasons that follow, I find that 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. I also find that 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.
2. This application is based on a N5 notice of termination served to the Tenant on February 28, 2022; it had a termination date of March 25, 2022. The notice includes allegations covering 6 dates involving substantial interference with respect to noise and behaviour and damage due to dog feces/urine. The incidents specified are:
  - November 29, 2021: complaint of abandoned dog in the Tenant's unit; animal services and police are called.
  - December 5, 2023: animal services and police attend and remove neglected dog from Tenant's unit' dog feces found everywhere in the unit; clean up cost is \$800.00.
  - February 9, 10, 13 and 23, 2022: complaints of excessive noise and smoke emanating from Tenant's unit disturbing the other tenants.
3. The Tenant was in possession of the rental unit on the date the application was filed.
4. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
5. There is no last month's rent deposit.

#### Landlord's testimony and evidence

6. The Landlord testified to and entered into evidence emails from himself and other tenants that established the complaints set out in the N5, and complaints about continued behaviour issues that have interfered with others. The behaviour outlined is in regard to noise, yelling, smoking, and bothering other tenants. The residential complex has a total of 4 tenants.
7. The Landlord entered into evidence the invoice from Property Global Services dated February 7, 2022, in the amount of \$904.00 including taxes, for 'specialty cleaning' of the Tenant's unit due to the dog feces and urine. This was the result of the Tenant leaving her dog alone in the unit November 29 through December 5, 2021.
8. The Landlord also testified that since receiving the N5 notice, the Tenant's behaviour has not changed; there is still yelling and noise plus other behaviour issues.
9. The Landlord further testified that all the other tenants are bothered greatly by the Tenant's behaviour.
10. Joseph Wood (JW) testified that he lives at #924, he has part of the 2<sup>nd</sup> floor and the 3<sup>rd</sup> floor of the building; he moved in July 2022 and there have been problems with the Tenant from basically the first day. The Tenant has a room on the 2<sup>nd</sup> floor, the smell is so bad coming from her room that he cannot use his part of the 2<sup>nd</sup> floor; tobacco and other smoke, what he believes is drugs, emanates from the Tenants room. The smell is

unbearable at times, he has even put carpet at the bottom of his own door to try and stop the smell from bothering him.

11. JW also testified that on January 9, 2023, he was woken up by loud yelling and noise from the Tenant' unit, it sounded like someone was being hurt and he could hear threats and reference to a gun, so he called the police. After the police left, the Tenant pounded on his door, yelling and calling him a piece of sh\_t for calling the police; this went on for about 10 minutes but he did not answer or respond.
12. JW further testified that the Tenant is regularly substantially interfering with his reasonable enjoyment, to the point where he does not feel safe. He suffers from mental health and health issues; he feels both are being negatively affected by the Tenant's behaviour. He does not have problems with anyone else in the complex; if the Tenant is permitted to stay, he will have to look elsewhere to move for his own mental and physical well-being,
13. The Landlord's Legal Representative submitted that the Tenant's behaviour is untenable, it cannot continue for the sake of the other tenants; eviction is the only alternative as there has been no improvement,

#### Analysis

14. This application is based on sections 62 and 64 of the *Residential Tenancies Act, 2006* (the 'Act') which say:

62. (1) A landlord may give a tenant notice of termination of the tenancy if the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex wilfully or negligently causes undue damage to the rental unit or the residential complex. 2006, c. 17, s. 62 (1).

(2) A notice of termination under this section shall,

- (a) provide a termination date not earlier than the 20th day after the notice is given;
- (b) set out the grounds for termination; and
- (c) require the tenant, within seven days,
  - (i) to repair the damaged property or pay to the landlord the reasonable costs of repairing the damaged property, or
  - (ii) to replace the damaged property or pay to the landlord the reasonable costs of replacing the damaged property, if it is not reasonable to repair the damaged property.

(3) The notice of termination under this section is void if the tenant, within seven days after receiving the notice, complies with the requirement referred to in clause (2) (c) or makes arrangements satisfactory to the landlord to comply with that requirement.

64.(1) 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 the 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.

(3) The notice of termination under subsection (1) is void if the tenant, within seven days after receiving the notice, stops the conduct or activity or corrects the omission.

15. Based on the uncontested evidence and testimony before me, I find the Tenant did not void the N5 notice within the 7-day voiding period, February 28, 2022 through March 6, 2022
16. I also find, based in the uncontested evidence and testimony before me, that the Tenant or an occupant of the rental willfully or negligently caused undue damage to the residential complex. The evidence establishes the Landlord had to pay for speciality cleaning services enlist the services due to the Tenant leaving her dog alone in the unit; this cost the Landlord \$800.00 plus tax, for a total of \$904.00. The damage to the unit was the stench caused by the dog feces and urine; the unit had to be brought back to a liveable state that did not involve the smell of hazardous waste. The cleaning company reference their service as 'Speciality Cleaning Service – Hazardous Materials'. Black's Law Dictionary defines damage as "Loss, injury, or deterioration, caused by the negligence, design, or accident of one person to another, in respect of the latter's person or property". Dog feces/urine all over the unit meets the definition of damage.
17. I further find, based on the uncontested testimony and evidence before me, that the Tenant or an occupant of the rental unit has substantially interfered with another tenant of the rental complex and the Landlord's reasonable enjoyment, has substantially interfered with the Landlord's lawful interest in the property. The uncontested evidence and testimony establishes that the Tenant's behaviour has not changed, there is still noise and other behaviour that interferes with the enjoyment of the other tenants in the complex.

#### Relief from Eviction

18. 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. The Tenant's behaviour, or the occupant's whose behaviour she is responsible for, has not improved.
19. This order contains all 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 Tenant is terminated. The Tenant must move out of the rental unit on or before February 19, 2023.

2. If the unit is not vacated on or before February 19, 2023, then starting February 20, 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 20, 2023.
4. The Tenant shall pay to the Landlord \$904.00, which represents the reasonable costs of repairing the damages.
5. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
6. The total amount the Tenant owes the Landlord is \$1,090.00.
7. If the Tenant does not pay the Landlord the full amount owing on or before February 19, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 20, 2023 at 5.00% annually on the balance outstanding.

**February 8, 2023**  
**Date Issued**

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Diane Wade  
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 20, 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.