



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

Citation: Windsor Essex Community Housing Corporation v Prendergast-McLellan, 2023 ONLTB 19910

Date: 2023-02-08

File Number: LTB-L-047016-22

In the matter of: 706, 395 UNIVERSITY AVE E
WINDSOR ON N9A2Z2

Between: Windsor Essex Community Housing Corporation Landlord

And

Jocelyn Prendergast-McLellan Tenant

Windsor Essex Community Housing Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Jocelyn Prendergast-McLellan (the 'Tenant') 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 6, 2023.

Only the Landlord's agent, Tamara Membrano, attended the hearing.

As of 9:28am, 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, an order shall issue terminating the tenancy on February 13, 2023 and awarding the Landlord daily compensation for the Tenant's stay at the rental unit as well as their application filing fee.
2. The Tenant was in possession of the rental unit on the date the application was filed and continued to be in possession of the rental unit as of the hearing date.

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3. By way of background, this is a month-to-month tenancy in which rent is due on the first of the month in the amount of \$115.00. The residential complex is an apartment building in which the Tenant occupies a one-bedroom unit. This tenancy began on May 1, 2022.

N7 Notice of Termination

4. On July 6, 2022, the Landlord gave the Tenant an N7 notice of termination with the termination date of July 25, 2022 pursuant to subsection 66(1) of the Act based on an incident that took place on June 30, 2022.
5. The Landlord's witness, TM, who is the acting district manager and whose portfolio consists of the residential complex, describes the complex as a building with 150 units consisting of a diverse demographic including families with children, adults and an elderly population.
6. TM testified that on June 30, 2022 she conducted an annual inspection of the rental unit to find the smoke detector tampered and disconnected from the rental unit. A copy of the smoke detector was submitted into evidence showing wires hanging out from the fixture. TM testified that the smoke detector was repaired the same day and re-attached to the console.
7. On February 2, 2023, TM testified that she attended the rental unit for a follow-up inspection where the Tenant permitted her entry (since the locks had been changed) and she found the smoke detector to have been removed once again. A copy of the picture of the smoke detector was submitted into evidence in support of this allegation.
8. TM testified that she spoke to the Tenant that day about her behaviour but did not receive an explanation as to why the Tenant had disconnected the smoke detector.
9. TM explains that the smoke detector is a life safety device that alerts the building residents in the event of a fire. By disconnecting the smoke detector and tampering with this device, the Tenant has put other residents and herself at jeopardy as if there was a fire at the premises or in her unit, it would go undetected as the device would fail.
10. The Landlord seeks a termination of the tenancy and reimbursement of the application filing fee.

ANALYSIS

11. Subsection 66(1) of the Act states:

66 (1) A landlord may give a tenant notice of termination of the tenancy if,

(a) an act or omission of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant seriously impairs or has seriously impaired the safety of any person; and

(b) the act or omission occurs in the residential complex.

12. Based on the uncontested evidence before the Board, I find that by tampering with the smoke detector and removing it from the fixture, the Tenant has engaged in conduct that has seriously impaired not only her own but also the safety of others including residents, visitors and staff.
13. The photos of the Landlord showed that the smoke detectors had been tampered with in a way that was not merely accidental. There were wires dangling from the ceiling and appeared to be deliberate. If the smoke detectors had been removed or interfered with on only one occasion, then it could possibly have been accidental. However, the smoke detectors were interfered with in a very deliberate way before the N7 notice of termination was served and after, as well.
14. As such, I do not find that a conditional order would be appropriate under the circumstances as the Tenant's behaviour has not changed or subsided since the service of the N7 notice of termination.
15. The Landlord's request for a termination of the tenancy is granted.

Daily compensation, NSF charges, rent deposit

16. The Tenant was required to pay the Landlord \$741.04 in daily compensation for use and occupation of the rental unit for the period from July 26, 2022 to February 6, 2023.
17. Based on the Monthly rent, the daily compensation is \$3.78. This amount is calculated as follows: \$115.00 x 12, divided by 365 days.
18. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
19. There is no last month's rent deposit.
20. 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.
21. 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 Tenant is terminated. The Tenant must move out of the rental unit on or before February 13, 2023.
2. If the unit is not vacated on or before February 13, 2023, then starting February 14, 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 14, 2023. The Sheriff is requested to expedite the enforcement of this order.
4. The Tenant shall pay to the Landlord \$741.04 (**less any amount already paid since the application was filed**), which represents compensation for the use of the unit from July

26, 2022 to February 6, 2023, less the rent deposit and interest the Landlord owes on the rent deposit.

5. The Tenant shall also pay the Landlord compensation of \$3.78 per day for the use of the unit starting February 7, 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.
7. If the Tenant does not pay the Landlord the full amount owing on or before February 13, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 14, 2023 at 5.00% annually on the balance outstanding.

February 8, 2023

Date Issued

Sonia Anwar-Ali

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 14, 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.