



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

**Citation:** THEOCHARTIS BROTHER PROPERTIES v TITUS, 2023 ONLTB 18256

**Date:** 2023-02-08

**File Number:** SWL-54936-21

LTB-L-072116-22

**In the matter of:** 221, 49 OAKVILLE AVENUE  
LONDON ONTARIO N5V2R9

**Between:** THEOCHARTIS BROTHER PROPERTIES Landlord

**And**

JOE TITUS

Tenant  
The THEOCHARTIS BROTHER PROPERTIES (the 'Landlord') applied for an order to terminate the tenancy and evict JOE TITUS (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.

This application was heard by videoconference on December 7, 2022.

The Landlord's representative Carmen Dawdy and the agents for the Landlord, Wendy Mcstalker (WM) and Don Bain (DB) attended the hearing.

As of 10 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.

**Preliminary issues:**

The Landlord's representative asked that the N5 notice served on the Tenant be withdrawn from this application and that the Board proceed on the N7 notice. The N5 notice was withdrawn at the hearing.

**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 between the Landlord and the Tenant is terminated.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On August 20, 2021, the Landlord gave the Tenant an N7 notice of termination. The notice of termination contains the following allegations:
  - The Tenant changed the locking system on the door by adding another locking mechanism inside the door. The Landlord attempted to enter due to a flooding in the unit below the Tenant's. The Landlord needed to gain entry in order to find the source of the flooding.
  - During the attempted entry the Tenant began yelling at the Landlord and Superintendent that he was to provide 24- hours notice to enter and would not allow entry to address the emergency situation.
  - The Tenant later went to the balcony and brandished a baseball bat, yelling at, and threatening to harm the superintendent.
4. The Superintendents DB and WM testified that on July 2, 2022 a flood occurred in the building. The Superintendent Don Bain (DB) needed access to the Tenant's rental unit as water was flooding into the unit below.
5. Both DB and WM attempted to contact the Tenant to let him know it was necessary to enter the rental unit due to the flood. The Tenant did not respond to the phone calls or answer the door when the Landlord attended at his rental unit. He shouted "24 hours notice."
6. DB then attempted to speak to the Tenant again about the situation with the flooding and asked the Tenant's family members who also live in the building for assistance communicating with the Tenant about the flood. The Tenant refused to open the door and shouted, "24 hours notice."
7. DB entered the rental unit and inspected the bathroom. As he was leaving the Tenant returned home. DB tried to explain the reason for his being at the apartment was an emergency but the Tenant was yelling at him "24 hours notice"
8. DB testified he left the rental unit and the Tenant then went to the balcony and started yelling at him again. Both DB and WM testified that they witnessed the Tenant brandishing a baseball bat and threatening the Superintendent DB. DB testified the Tenant told him that DB was breaking the law by entering his rental unit.
9. WM testified that she is fearful of the Tenant's threatening DB and that the Tenant has been hostile towards the Superintendents on other occasions.

Analysis

10. The N7 notice was served under s.66(1) of the *Residential Tenancies Act, 2006* (“Act”) which 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.

11. In *Musse v. 6965083 Canada Inc.*, 2021 ONSC 1085, the Divisional Court explained s.66 as follows:

[42] The legal standard for eviction required by s. 66(1) is settled. The landlord is required to establish, on a balance of probabilities, that the conduct of the tenant, another occupant of the unit or any guest invited onto the property by the tenant, seriously impaired another person’s safety. “Impairment” includes both actual impairment and a real risk of impairment. See *Furr v. Courtland Mews Cooperative Housing Inc.*, 2020 ONSC 1175 (Div. Ct.), at para. 17.

12. Due to the emergency flooding situation the Superintendent was entitled to enter the rental unit without notice as set out in s. 26 of the Act

**26** (1) A landlord may enter a rental unit at any time without written notice,

- (a) in cases of emergency; or
- (b) if the tenant consents to the entry at the time of entry

13. I find that the Tenant seriously impaired the safety of the Superintendent DB by threatening to harm him with a baseball bat because he entered his rental unit due to a building emergency.
14. The Tenant’s behaviour indicates that there is a real risk he may harm the Superintendent or other maintenance workers in the future should they need access to his rental unit where there is an emergency and notice is not required.
15. The Tenant altered the locking system in the rental unit which would prevent the Landlord from entering in an emergency, and the Tenant refused entry to the rental unit when the Landlord informed him that he had to enter the rental unit due to the flooding in the unit directly below. The Tenant’s behaviour indicates that there is a real risk to other Tenants if

an emergency were to occur the Landlord would not be able to access his rental unit in a timely manner. Section 35 of the Act expressly prohibits a tenant from alter the locking system on an entry door without the Landlord's consent.

16. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
17. The Tenant shall pay the Landlord compensation of \$27.81 per day for the use of the unit starting August 31, 2021 until the date the Tenant moves out of the unit.
18. Based on the Monthly rent, the daily rent/compensation is \$27.81. This amount is calculated as follows:  $\$826.00 \times 12$  divided by 365 days.
19. 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 February 26, 2023.
2. The Tenant shall pay the Landlord compensation of \$27.81 per day for the use of the unit starting August 31, 2021 until the date the Tenant moves out of the unit. Any rent payments made by the Tenant since August 31, 2021, shall be applied to the total amount owing by the Tenant.
3. The Tenant shall also pay to the Landlord \$201.00 for the cost of filing the application.
4. If the Tenant does not pay the Landlord the full amount owing on or before February 26, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 27, 2023 at 5.00% annually on the balance outstanding.
5. If the unit is not vacated on or before March 31, 2023 then starting April 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession if the unit to the Landlord on or after April 1, 2023.

**March 8, 2023**

**Date Issued**

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**Maria Shaw**

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.