



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

Citation: Toronto Seniors Housing Corporation v Latino, 2023 ONLTB 19009

Date: 2023-02-07

File Number: LTB-L-046624-22

In the matter of: 803, 423 YONGE ST
TORONTO ON M5B1T2

Between: Toronto Seniors Housing Corporation Landlord

And
Radell Frances Latino Tenant

2023 ONLTB 19009 (CanLII)

Toronto Seniors Housing Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Radell Frances Latino (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 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;
- 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 January 19, 2023.

Only the Landlord’s agent, Eliana Ferreira and the Landlord’s legal representative, C. Salgado, attended the hearing. The Landlord’s witness, M. Gorth, also attended the hearing.

As of 9:30 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. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N5 Notice of Termination

Voiding Period:

1. On August 4, 2022, the Landlord mailed the Tenant an N5 notice of termination, and it was deemed to have been served on August 9, 2022. The Landlord's allegations concerned an ongoing issue with bed bugs. The Landlord alleges that the Tenant has an uncleanliness and pest control issues, and they have consistently refused to prepare for pest control, and they have refused treatment, and the problem is worsening. The Landlord also alleges that the Tenant or the Tenant's occupants or guests have tampered with the fire extinguisher on the eighth floor of the residential complex.
2. The Landlord's witness, E. Ferreira (EF), is the senior service coordinator for the Landlord. She said that it is her job to ensure that all tenants have a healthy environment, and she provides supports and references. EF said that there have been many complaints about the Tenant, the Tenant's guests and their behaviour in the building.
3. EF submitted into evidence photos from a unit inspection carried out on August 17, 2022, after a scheduled pest treatment on August 15, 2022. The witness alleged that the Tenant had not permitted pest control to enter because the unit was not prepared. Consequently, the Landlord alleges that the Tenant did not void the N5 notice of termination.

Landlord's Evidence about Lack of Cleanliness and Refusal of Pest Control

4. The Landlord's witness, M. Gorth (MG) is the senior superintendent of the residential complex.
5. MG said that the rental unit is in a very poor condition, unclean, there are lots of insects, including cockroaches, and most recently, bed bugs. He said that the Tenant does not keep the unit clean, and they admit many guests who sleep all over the unit. He said that he began working in his position in April 2022, and that the poor condition of the unit has continued, and it has worsened through the year. He said that on his last visit on January 16, 2023, the unit was in as bad a state as ever.
6. MG said that the Tenant refuses to prepare the unit for pest control, despite being given instructions and valid notices of entry. He said that the Tenant always says that they are not feeling well. MG said that the bed bug problem has been exacerbated by the state of the rental unit, and the bed bugs have now infested other, neighbouring units.
7. EF said that she has attempted to discuss the issue with the Tenant on various occasions, and she has offered the Tenant help with deep cleaning support, but the Tenant has denied needing or wanting this help. She said that multiple warning letters have been sent to the Tenant about the unsanitary conditions in the Tenant's unit, including March 22, 2022 and April 21, 2022. EF said that her role is to try everything possible to connect with the Tenant and assist the Tenant in getting help and preserving the tenancy. EF said that there has mostly been no response from the Tenant. She said that she has scheduled a number of pest control visits over the last year, and they have all been refused because the Tenant is unprepared. EF said that every time she has entered the rental unit, the condition has been unchanged.

8. EF said that the Tenant eventually told her that they were willing to have treatment carried out on January 16, 2023. This was a date proposed by the Tenant. However, when pest control came, the Tenant said that they thought it was the next day, and the unit was not prepared.
9. EF submitted into evidence photos from an inspection the week before the hearing, and she said that the condition has worsened, there is more clutter, and the Tenant had several guests living in the unit and sleeping on the floor. She said that she personally delivered all the Landlord's disclosure to the Tenant, and the Tenant said that they understood the documents.
10. Based on the uncontested evidence of the Landlord's witnesses, I find that the Tenant did not stop the conduct or activity within seven days after receiving the N5 notice of termination. In particular, the Tenant did not prepare for pest control, and the state of the rental unit remained unclean and untreated for bugs in the week after the Landlord served the N5 notice of termination. Therefore, the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006 (Act)*.
11. I also find, on the uncontested evidence of the Landlord, that the Tenant's conduct substantially interfered with the reasonable enjoyment or lawful right, interest or privilege of the Landlord or another tenant. The Tenant's rental unit was not in an ordinary state of cleanliness, and the Tenant has not taken any steps to improve the state of the unit to immediately before the date of the hearing. The Tenant has failed to prepare the unit for pest control, and the Tenant has continuously refused entry to pest control for proper treatment, despite numerous notices to prepare. The problem is getting worse, and there is no sign that the Tenant is willing to accept help or do anything to change the situation.

Landlord's Evidence about Fire Extinguisher

12. EF said that in Spring of 2022, the staff found the fire extinguisher on the eighth floor had been removed and it was found in the Tenant's rental unit. A letter was sent to the Tenant on June 1, 2022, warning the Tenant about fire extinguisher misuse.
13. EF said that there was no response to the letter.
14. EF testified that the Landlord has many concerns about safety in the residential complex, potential fire hazard caused by tampering with fire extinguishers, and exacerbating issues with bed bug infestation.
15. I find that this incident has also substantially interfered with the reasonable enjoyment or lawful right, interest, or privilege of the Landlord or another tenant. The Landlord's evidence proves, on a balance of probabilities, that the Tenant, the Tenant's occupants or guests of the Tenant, were permitted to tamper with, and remove the fire extinguisher to the Tenant's unit.

N6 Notice of Termination and Alleged Illegal Act

16. The Landlord's witnesses did not allege, nor did they provide, more detailed evidence about whether it was the Tenant or an occupant who carried out an illegal act, or whether the Tenant permitted an illegal act to be carried out, nor exactly what the illegal act was or when it happened.
17. Consequently, the Landlord's application with respect to allegations of an illegal act will be dismissed.

N7 Notice of Termination and Serious Impairment to Safety

18. The Landlord's allegations contained in the N7 notice of termination were exactly the same as those alleged in the N5 notice of termination.
19. The only serious impairment to safety specifically alleged by the Landlord was in relation to the removal of the fire extinguisher.
20. Based on the uncontested evidence of the Landlord's witnesses, I find that the removal of a fire extinguisher, or tampering with the fire extinguisher for the entire floor, creates a serious impairment to safety for all the residents of that floor. It is the Landlord's legal obligation to provide the fire extinguishers to residents of the building in the case of fire, and removal and tampering impedes the Landlord's ability to ensure there are safety measures in the event of a fire in the building.
21. The Landlord's uncontested evidence was that the fire extinguisher was ultimately found in the Tenant's rental unit, and therefore I find that the Landlord has proved, on a balance of probabilities, that the serious impairment to safety was carried out by the Tenant, an occupant of the rental unit or a person the Tenant permitted in the residential complex, and the act occurred in the residential complex.
22. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Section 83 Considerations:

23. The Landlord seeks eviction of the Tenant because of the bed bug infestation that the Tenant will not address, nor permit the Landlord to address, and because this is affecting all the other tenants in the residential complex. The Landlord submits that the Tenant should be evicted because the Tenant and the Tenant's guests cause problems to other tenants and create a fire hazard in the building.
24. I find that the Landlord has made many attempts to address this situation by attempting to provide assistance to the Tenant in cleaning up the unit, and by scheduling at least 16 pest control visits in one year. These attempts were all made by written communication, or by face to face discussions with the Tenant. The Landlord even obtained the permission of the Tenant to carry out pest control on a specific date suggested by the Tenant, and the Tenant still did not prepare the unit. All attempts to help have been refused, and the Tenant continues to refuse to improve the situation. The situation is getting worse. Consequently, I find that the tenancy is no longer viable.

25. 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. There is no prospect that the situation has improved or will improve, and it is prejudicial to the Landlord for the tenancy to continue.

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.
4. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
5. The total amount the Tenant owes the Landlord is \$186.00.
6. If the Tenant does not pay the Landlord the full amount owing on or before February 18, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 19, 2023 at 5.00% annually on the balance outstanding.
7. If the Tenant does not move out of the rental unit on or before February 18, 2023, the Landlord is authorized to deduct \$16.27 per day for compensation for the use of the unit starting February 19, 2023, to the date the Tenant moves out of the unit.
8. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

February 7, 2023
Date Issued

 Nancy Morris
 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.