



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

**Citation:** Davidson v Falls, 2023 ONLTB 18404

**Date:** 2023-02-07

**File Number:** LTB-L-044254-22

**In the matter of:** Upper-815 Parent Avenue  
Windsor, ON N9A 2C8

**Between:** Kishma Davidson Landlord

**And**

Mike Falls Tenant

Kishma Davidson (the 'Landlord') applied for an order to terminate the tenancy and evict Mike Falls (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 involving the production of an illegal drug, the trafficking in an illegal drug or the possession of an illegal drug for the purposes of trafficking.

Further, 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 18, 2023.

Only the Landlord attended the hearing.

As of 1:39 pm, 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. Therefore, the tenancy will be terminated.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On August 5, 2022, the Landlord gave the Tenant an N6 notice of termination deemed served that same date.. The notice of termination contains the following allegations:
  - a) That on July 21, 2022, two well-known addicts were outside of the unit. One entered and exited while the other waited outside.

2023 ONLTB 18404 (CanLII)

- b) That on July 28, 2022, from noon until 1:00 pm constant traffic was moving in and out of the unit.
  - c) That on August 5, 2022, from noon until 11:00 pm there is constant traffic going in and out of the unit. One guest stole groceries from the Landlord's porch and proceeded to enter the back yard.
4. The residential complex is a duplex. The Landlord lives in the lower unit while the Tenant's unit is the upper unit.
  5. The Landlord testified that the Tenant is known drug user and dealer in her neighbourhood and that she has had to endure constant foot traffic to and from the unit from known addicts in the neighbourhood.
  6. The Landlord testified that the issues started at the commencement of the tenancy and persisted to the date of the hearing.
  7. Entered into evidence were several videos of people entering and exiting the unit and wandering around the residential complex including a video of an individual coming to the Landlord's door requesting her to call 911 as the Tenant had overdosed in the unit. A further video shows a guest of the Tenant stealing the Landlord's groceries.
  8. On the basis of the Landlord's uncontested evidence, I am satisfied on a balance of probabilities that the Tenant has committed an illegal act involving the possession of an illegal drug for the purposes of trafficking in the rental unit and the Landlord has made out her case in accordance with s. 61(1) of the *Residential Tenancies Act, 2006* (the 'Act').
  9. The Landlord collected a rent deposit of \$2,300.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$33.55 is owing to the Tenant for the period from June 20, 2022 to January 18, 2023.
  10. In accordance with subsection 106(10) of the Act the last month's rent deposit shall be applied to the rent for the last month of the tenancy.
  11. The Landlord requested that she preferred proceeding with her application under s. 69 of the Act to evict the Tenant only and decided to withdraw her claim for damages pursuant to s. 89 of the Act.
  12. 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:**

13. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before February 12, 2023.
14. If the unit is not vacated on or before February 12, 2023, then starting February 13, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

15. The Tenant shall pay to the Landlord \$3,564.53, which represents compensation for the use of the unit from August 16, 2022 to January 18, 2023, less the rent deposit and interest the Landlord owes on the rent deposit.
16. The Tenant shall also pay the Landlord compensation of \$37.81 per day for the use of the unit starting January 19, 2023 until the date the Tenant moves out of the unit.
17. The total amount the Tenant owes the Landlord is \$3,564.53.
18. If the Tenant does not pay the Landlord the full amount owing on or before February 12, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 13, 2023 at 5.00% annually on the balance outstanding.
19. The Landlord's claim for damages pursuant to s. 89 of the Act is dismissed.

**February 7, 2023**

**Date Issued**

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Jagger Benham

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 13, 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.