



**Order under Section 69 / 88.1
Residential Tenancies Act, 2006**

Citation: Russo v Degraw, 2023 ONLTB 18273

Date: 2023-02-06

File Number: LTB-L-043461-22

In the matter of: 1592 CHURCH ST
Windsor ON N8X1V3

Between: Joe Russo Landlords
Laurel Russo

And

Peggy Degraw Tenant

Joe Russo and Laurel Russo (the 'Landlords') applied for an order to terminate the tenancy and evict Peggy Degraw (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 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 Landlords also claimed compensation for each day the Tenant remained in the unit after the termination date.

The Landlords also applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's conduct or that of another occupant of the rental unit or someone the Tenant permitted in the residential complex. This conduct substantially interfered with the Landlord's reasonable enjoyment of the residential complex or another lawful right, privilege or interest.

This application was heard by videoconference on January 23, 2023.

The Landlord, Joe Russo, the Landlord's Legal Representative, Tim Curry, and the Tenant attended the hearing. The Tenant spoke with Duty Counsel prior to 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 Landlords' application is granted.
2. The Tenant is in possession of the rental unit on the date the application was filed.
3. On July 13, 2022, the Landlord gave the Tenant a valid N5 and a valid N6 notices of termination. The notices of termination allege that: on July 14, 2021, the Tenant left refuse on the residential complex resulting in a by-law infarction and a fine of \$418.82; the Tenant installed a shed on the residential complex without obtaining a permit in violation of the Ontario Building Code, s. 8(1); on February 2, 2022 and July 13, 2022, the Tenant left refuse and debris on the residential complex resulting in further by-law infarctions and a fines of \$226.00 and \$130.23, respectively.
4. The Landlords submitted several notices of by-law infarctions, City Orders for the above infarctions, and various pictures of debris, trash, and furniture scattered around the residential complex. The Tenant did not dispute the allegations contained in the notices of termination. As a result, I am satisfied that the Landlord has proven the allegations contained in the N5 and N6 notices of termination.
5. The Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex substantially interfered with the reasonable enjoyment of the residential complex by the Landlords or another lawful right, privilege or interest of the Landlord. It was undisputed that the Landlords were fined by the City for the various infarctions, and these fines were added to the property tax account for the residential complex.
6. The Tenant, an occupant of the Tenant's rental unit, or the Tenant's guest has committed an illegal act in the rental unit or residential complex by installing a shed in violation of the Building Code and leaving refuse, garbage and debris scattered about the residential complex in violation of the City of Windsor's by-laws.
7. According to the Landlords' documentary evidence, they have incurred reasonable out-of-pocket expenses of \$5,413.80. These expenses were incurred as a result of the substantial interference by the Tenant's actions. However, the amended application claims \$4,514.32. I am satisfied that the amended application was served on the Tenant on August 12, 2022 and filed with the Board on August 25, 2022. Accordingly, the order will be limited to the amount claimed in the amended application.
8. Based on the Monthly rent, the daily compensation is \$24.66. This amount is calculated as follows: \$750.00 x 12, divided by 365 days.

9. The Landlord collected a rent deposit of \$750.00 from the Tenant and this deposit is still being held by the Landlord.
10. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.
11. 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 not be unfair to postpone the eviction until August 6, 2023 pursuant to subsection 83(1)(b) of the Act.
12. I do not find it appropriate to issue a conditional order in this case. The evidence suggests that the Tenant will likely not comply with conditions to refrain from the behaviour that gave rise to the Landlords' application. I say this because the behaviour complained of continued after the Tenant was given the notices of termination. The Landlord incurred further out of pocket expenses to remove the shed on August 23, 2022. There were additional notices of by-law infractions in September 2022. The Landlord also incurred further out-of-pocket expenses to remove garbage and debris in December 2022. The Tenant explains that the behaviour results from her fiancé's hoarding which he is receiving treatment for. However, there was insufficient evidence to suggest that the hoarding behaviour was being effectively addressed to reduce the likelihood of repeat behaviour.
13. However, given the Tenant's financial situation, the length of the tenancy, and the lack of affordable housing, I find it would not be unfair to delay the eviction by 6 months to allow the Tenant to find alternative housing. The Landlords were not opposed to a 6-month delay.
14. This order contains all of the reasons for the decision within it and no further reasons will 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 August 6, 2023.
2. If the unit is not vacated on or before August 6, 2023, then starting August 7, 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 August 7, 2023.
4. The Tenant shall pay to the Landlord \$4,514.32, which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the substantial interference.
5. The Tenant shall also pay daily compensation of \$24.66 from January 24, 2023 to the day the Tenant vacates the rental unit.

6. If the Tenant does not pay the Landlord the full amount owing on or before August 6, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 7, 2023 at 5.00% annually on the balance outstanding.

February 6, 2023

Date Issued

Khalid Akram

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 February 7, 2024 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.