



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

Citation: Mcdowell v Sippel, 2023 ONLTB 17451

Date: 2023-01-30

File Number: LTB-L-074561-22

In the matter of: UPPER UNIT2, 2150 ADJALA-TECUMSETH TOWNLINE
TOTTENHAM ON L0G1W0

Between: Mervin Mcdowell Landlords
Susanna Mcdowell

And

Kody Sippel Tenant

Mervin Mcdowell and Susanna Mcdowell (the 'Landlords') applied for an order to terminate the tenancy and evict Kody Sippel (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the building has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlords in a building that has three or fewer residential units and the Landlords resides in the building.

The Landlords also claimed compensation for each day the Tenant remained in the unit after the termination date.

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

Only the Landlords and the Landlords' Representative, Nichole Fazzari attended the hearing. The Tenant was not present or represented at the hearing. The Landlords collects his own and the Tenant's mail from a community P.O. Box and for 10 years has left the Tenant's mail where mail is normally left which is on the table in the common area. The Landlords testified the Tenant has picked up all his mail except that from LTB choosing to ignore the correspondence. The Tenant's mother, Catherine Douglas (CD) attended the hearing claiming the Tenant was sick and she also claimed the Tenant found out about the hearing that same day because the Landlords withheld mail. CD did not have a letter of authorization provided by the Tenant to act on his behalf. It also appears CD chose to disconnect from the hearing when she could not give any detail about the Tenant's level of impairments and restrictions that would prevent him from attending and asking for an adjournment himself.

The hearing recessed to the end my block, to allow the Tenant or CD to re-join the hearing but they did not. I am satisfied the Tenant was properly served with notice. I see no reason for the Landlord to provide false and misleading information about leaving the Tenant's mail where mail is normally delivered when it's in the Landlord's interest that the Tenant attend the hearing to avoid delay. As such, the hearing proceeded based only on the Landlords' evidence.

Determinations:

1. As explained below, the Landlords has proven on a balance of probabilities the grounds for termination of the tenancy and/or the claim for compensation in the application. Therefore, the tenancy is terminated.

N7 Notice of Termination

2. On November 21, 2022, the Landlords gave the Tenant an N7 notice of termination November 26, 2022. The notice of termination contains the following allegations: On September 4, 2022 the Tenant pushed the chair the Landlord was sitting with force which toppled over causing the Landlord to hit the ground and his head on the wall; the Tenant took the Landlords' cell phone and broke it which led to charges of mischief laid by police; the Tenant has also blocked his front door to his unit preventing the Landlord from entering the unit; and the Tenant has a storage pod on the complex for a more than 2 weeks which contravenes city by-law.
3. The building has three or fewer residential units. The Landlords live in the residential complex.
4. On September 4, 2022, the Landlord testified the Tenant and his mother, CD assaulted him. The video showed the Landlord sitting alone on the porch when CD walked past him and placed a white cloth over the camera surveillance. The Landlord testified the Tenant pushed the chair over while he was sitting on it causing him to fall to the floor and the Tenant and CD proceeded to beat him up. The Tenant also took the Landlord's phone which was discovered by police broken in the side of the road. The Landlord wife called police from a neighbour's house because their phone, that required internet, was not working having discovered later that the internet router was disconnected [speculates this was done intentional by the Tenant]. The Landlord was treated on site by paramedics for scrapes, bruises, and a head wound. The police charged the Tenant with mischief and damage to property under \$5,000.00 but not assault because the police told him it's his testimony versus those accused and he had no witnesses. I find that on a balance of probability, that the Tenant substantially interfered with the Landlord's interest having taken and broken his phone and having caused him bodily harm.
5. On September 16, 2022, the Landlord hired a serviceman to repair the refrigerator in the Tenant's unit but couldn't enter the unit because the Tenant constructed a barrier wall to prevented entry. The Landlord testified and provided photographs of a barrier wall outside the Tenant's front door which extends about 5 feet tall and across to unit #1 which is occupied by the Tenant's mother, CD. The Tenant also posted a defamatory note and another that states the Landlord's name and he's " an ogler and a pervert". I find the Tenant's conduct substantially interfered with the Landlords' reasonable enjoyment of the complex, legal rights and interest. The content of the sign is unwelcomed and intended to be to offend, cause fear, and prevent the Landlord from entering the unit to conduct repairs. The barrier wall also contravenes fire and safety regulations because there's no clear pathway into the Tenant's unit in case of emergency as evident by the photographs.

6. As of October 18, 2022, the Tenant has a storage pod on the property which the Tenant has failed to remove. The Tenant's having refused to remove the pod interferes with the Landlord's rights, privilege and interests because it's situated near the entryway of the residential complex and exposes the Landlord to be charged a fine because it's been on the property for months and well over the 2 week period allowed by the city.

Relief from eviction

7. 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.
8. This is a longstanding tenancy, but the Tenant's conduct is particularly concerning given the Landlords are 78 and 80 years old. The Landlord was sitting outside alone, and the video clearly shows there was intention to hide the event of what appears to be a calculated assault. The Tenant's has not removed the pod, the barrier wall nor the sign(s) insulting the Landlord as of the date of this hearing. Their relationship is not repairable, and this tenancy likely cannot be preserved.

It is ordered that:

1. The tenancy between the Landlords and the Tenant is terminated. The Tenant must move out of the rental unit on or before February 4, 2023.
2. If the unit is not vacated on or before February 4, 2023, then starting February 5, 2023, the Landlords 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 Landlords on or after February 5, 2023.

January 30, 2023

Date Issued

Sandra Macchione

Member, Landlords 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 5, 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.

