



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

Citation: De Rita v Spiers, 2023 ONLTB 17353

Date: 2023-01-25

File Number: LTB-L-044276-22

In the matter of: 102, 1250 Ouellette Avenue
Windsor Ontario N8X1J3

Between: Michael De Rita Landlord

And

Sandra Spiers Tenant

Michael De Rita (the 'Landlord') applied for an order to terminate the tenancy and evict Sandra Spiers (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 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.

This application was heard by videoconference on October 3, 2022. Only the Landlord and their agent, A. Rosenfeld attended the hearing.

I waited until after 1:30pm to call the matter, 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.

At the hearing the Landlord requested not to pursue their claims for daily compensation and out-of-pocket expenses.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the Landlord's application is granted and the tenancy will terminate.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On January 31, 2022, the Landlord gave the Tenant a first, voidable N5 notice of termination. The allegations contained in the notice were:
 - On December 2, 2021, the Tenant permitted a guest into the building who has been served a no trespass notice due to his prior behaviour and having to be removed by the police several times.
 - On January 17, 2022, police attended the building due to a tenant complaining that smoke was entering her unit, the police attended and spoke to the Tenant. Case Number 22-4526
 - On January 26, 2022, a guest of the Tenant was seen on camera exiting the building and propping the door open, preventing it from closing which is a safety concern for the Landlord and other tenants.
4. Therefore, the Landlord was allowed to give the Tenant a second, non-voidable N5 notice of termination under section 68 of the *Residential Tenancies Act, 2006* (Act).
5. On February 2, 2022, the Landlord gave the Tenant a second N5 notice of termination. The notice of termination contains the following allegations:

specific details:

Date/Time	Details of the Events
FEBRUARY 4, 2022	GUESTS WHO YOU PERMITTED INTO THE BUILDING AND ATTENDED YOUR UNIT ATTEMPTED TO SLEEP UNDER THE STAIRWELL FOR THE NIGHT. WHEN ASKED BY MANAGEMENT WHAT THEY WERE DOING, THEY RESPONDED BY SAYING, SANDRA SAID SHE WILL PAY US \$10 FOR CLEANING UNDER THE STAIRS.
FEBRUARY 6 AND 7, 2022	CAMERAS SHOWED GUESTS ATTENDING YOUR UNIT PROPPING THE BACK ENTRANCE DOOR TO THE BUILDING OPEN AGAIN, AFFECTING THE SAFETY OF THE TENANTS AND SECURITY OF THE BUILDING. ESTIMATE TO REPAIR IS: \$150
FEBRUARY 7, 2022 7:44 A.M.	CAMERAS SHOWED GUESTS EXITING YOUR UNIT AND GOING TO THE LAUNDRY FACILITIES, DAMAGING THE ENTRANCE TO THE LAUNDRY ROOM AND BREAKING IN.

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6. The Landlord testified at the hearing to the allegations contained in both the first and second N5 notice of termination. I am satisfied based on the uncontested evidence that the Tenant has substantially interfered with other tenants as well as a lawful right privilege or interest of the Landlord.
7. On March 28, 2021, the Landlord gave the Tenant an N6 notice of termination. However, the allegations contained in the notice were not an illegal act, or the Landlord could not lead evidence sufficient enough to prove the allegations contained in the notice. Therefore the N6 notice is dismissed.
8. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$950.00 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.

RELIEF FROM EVICTION

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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
12. The Landlord stated that after the notices were served on the Tenant there were further issues. They were:
 - On May 24, 2022, the Tenant's guests were smoking in the stairwell of the residential complex. ;

- On April 13, 2022, at approximately 6:30am, the building cleaner had found a guest of the Tenant sleeping in the laundry room. The Landlord relied on a video at the hearing confirming that the individual sleeping in the laundry room went back to the Tenant's unit after found by the Landlord's cleaner.
- The Landlord received a complaint that on September 27, 2022, at approximately 7:00am, there were guests of the Tenant yelling and throwing rocks at the Tenant's window to be let into the building. The Tenant invited them into the rental unit.

13. As already mentioned, the Tenant did not attend the hearing to give evidence regarding their personal circumstances or contest the Landlord's application for an eviction order. Furthermore, the conduct of the Tenant has not improved and therefore I see no reason to delay the eviction.

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 January 30, 2023.
2. If the unit is not vacated on or before January 30, 2023, then starting January 31, 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 January 31, 2023.
4. The Tenant shall pay the Landlord compensation of \$32.11 per day for the use of the unit starting January 31, 2022 until the date the Tenant moves out of the unit.
5. The Tenant shall also pay to the Landlord \$201.00 for the cost of filing the application.
6. If the Tenant does not pay the Landlord the full amount owing on or before January 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 31, 2023 at 5.00% annually on the balance outstanding.

January 25, 2023

Date Issued

Curtis Begg

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.

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In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on July 31, 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.

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