



Order under Section 94.7 Residential Tenancies Act, 2006

Citation: Lao Village Housing Co-operative Inc. v Last, 2023 ONLTB 16202

Date: 2023-01-24 **File**

Number: LTB-C-078093-22

In the matter of: 48 Windways Crescent
Ottawa Ontario K2M2P4

Between: Lao Village Housing Co-operative Inc. Co-op

And

Melissa Last Co-op Member

Lao Village Housing Co-operative Inc. (the 'Co-op') applied for an order to end the occupancy of the member unit and evict Melissa Last (the 'Co-op Member') because the conduct of the Co-op Member, another occupant of the member unit or a person permitted in the residential complex by the Co-op Member is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the Co-op or occupant, or substantially interferes with the another lawful right, privilege or interest of the co-operative or another member or occupant.

This application was heard by videoconference on January 12, 2023.

Only the Co-op's agent, A. Fournier, and the Co-op's legal representative, T. Jacquard, attended for the Co-op.

The hearing was scheduled for 10 a.m. As of 1:05 p.m., the Co-op Member 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 Co-op's evidence.

Determinations:

1. The Co-op served the Co-op Member with an N5C Notice on November 7, 2022. The Coop Member did not void the notice by reinstating her Enbridge gas account by the end of the voiding period.
2. As of the hearing date, the Co-op Member was still in possession of the member unit.



3. The Co-op served the Co-op Member the N5C Notice of termination alleging that the Co-op Member had failed to pay her Enbridge account, and she had been disconnected. The Co-op Member was instructed to reinstate her account in order to void the N5C notice of termination.
4. The Co-op's agent, A. Fournier (AF), testified that when a Co-op Member moves into their unit they are instructed to transfer hydro and gas bills into their own name. He said that the Co-op Member moved into her unit in 2014, and, as far as the Co-op is aware, she was paying the hydro and gas until July 2022. He said that the Co-op received notice from Enbridge on July 4, 2022, that the Co-op Member's account had been suspended due to non payment of her bills, and her gas service was disconnected.
5. AF said that the Co-op wrote a letter to the Co-op Member instructing her to resolve the problem on July 14, 2022. He said that the Co-op wrote another letter on July 23, 2022, requesting the Co-op Member to come before its Board on August 5, 2022, in order to discuss her arrears and utility bills. He said that the Co-op Member did not respond to the letters, and she did not appear before the Co-op Board, despite numerous attempts by the Co-op to reach out to the Co-op Member.
6. AF said that the entire Co-op undertook to replace furnaces in the units, and they were unable to replace the Co-op Member's furnace because there was no gas service to the unit.
7. AF said that nothing has changed since August 2022. He said that he inspected the member unit on January 9, 2023, the Co-op Member was not there, and there was still no gas service to the unit. He said that the unit was in a terrible state with broken glass, a broken window, and holes in the door. AF said that he suspects the Co-op Member is not living in the unit.
8. The Co-op requests an eviction order. It submits that it is dangerous for there to be no gas service to the unit, the Co-op was unable to connect and install a new furnace, and the lack of heat could cause damage to the pipes, creating a hazard in the unit, and affecting the safety of other neighbouring units.
9. I find, on the basis of AF's evidence, that the Co-op Member did not void the N5C notice of termination. The Co-op has communicated with the Co-op Member several times in order to ameliorate the situation, but the Co-op Member has failed to respond. I find, on a balance of probabilities, that the Co-op Member has failed to reinstate her gas service, and she has therefore created a substantial interference with the lawful right, privilege or interest of the Co-op or other members.

Section 94.12 considerations:

10. The Co-op's witness, V. Larose (VL), is the Vice President of the Co-op Board, as well as a resident of the Co-op. VL said that she moved in on April 1, 2022, and on December 23,



2022, her vehicle was stolen by the Co-op Member while it was idling outside her home. She said that she reported the theft immediately, and her vehicle was recovered 30 minutes later when the Co-op Member was found by the police, in VL's vehicle up the road from the Co-op.

11. The Co-op submits that it is dangerous, and it risks freezing of pipes, to have a Co-op member unit with no gas service, and the Co-op Member has failed to pay her bill and restore service, despite warnings from the Co-op. The Co-op also submits that the Co-op Member has created fear among members of the Co-op by stealing other member's property, and also by keeping her unit in a terrible state, with serious damage in her unit.
12. The Co-op incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
13. I have considered all of the disclosed circumstances in accordance with subsection 94.12(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would be unfair to grant relief from eviction pursuant to subsection 94.12(1) of the Act. The Co-op Member has failed to restore a vital service in the unit, thereby creating a hazard to the unit and neighbouring units. She has also caused fear among other members of the Co-op, she has failed to respond to any communications from the Co-op Board, and she has failed to appear before the Co-op Board. Therefore, I find that the Co-op Member's membership in the Co-op is no longer viable.

It is ordered that:

1. The Co-op Member's occupancy is terminated. The Co-op Member must move out of the member unit on or before February 4, 2023.
2. The Co-op Member shall pay the Co-op the \$201.00 cost of filing this application.
3. If the Co-op Member does not pay the Co-op the full amount owing on or before February 4, 2023, the Co-op Member will start to owe interest. This will be simple interest calculated from February 5, 2023 at 5.00% annually on the balance outstanding.
4. If the unit is not vacated on or before February 4, 2023, then starting February 5, 2023, the Co-op may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
5. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Co-op on or after February 5, 2023.

January 24, 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 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.