



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

Citation: Omelic v Evans, 2023 ONLTB 14044

Date: 2023-01-10

File Number: LTB-L-002724-21

In the matter of: B5, 317 Cambridge St N
Ottawa ON K1R7B3

Between: Senija Omelic Landlord

And

Aaron Evans Tenant

Senija Omelic (the 'Landlord') applied for an order to terminate the tenancy and evict Aaron Evans (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 Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

Senija Omelic (the 'Landlord') also applied for an order requiring Aaron Evans (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 June 30, 2022.

Only the Landlord attended the hearing. Jason Miles and Taylor Richard attended as witnesses for the Landlord.

As of 9:58 a.m., 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. For the reasons that follow, I find that the Tenant has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant. The tenancy will be terminated.

Background Facts

2. The Landlord served the tenant a voidable N5 Notice of Termination ('N5 notice') with a termination date of November 29, 2021, alleging that the Tenant's behaviour or the behaviour of someone visiting or living with them has substantially interfered with another tenant's or the Landlord's reasonable enjoyment of the residential complex or lawful rights, privileges or interests.
3. Subsequent to the first N5 notice, pursuant to subsection 68(1) of the Act, the Landlord served the Tenant with a second non-voidable N5 Notice of Termination with the termination date of December 17, 2021 as the Landlord alleged that within six months of the first N5 notice being served the Tenant's conduct substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant and the Tenant or someone visiting or living with the Tenant has willfully or negligently damaged the rental unit or residential complex.
4. The second N5 notice alleges the following;
 - On December 1, 2021 (11:40 pm – 2am) the Tenant and his guests were playing music loudly and shouting in his unit.
 - On December 2, 2021 (6 am) the Tenant was seen laying on the floor of the Basement with a female, possibly drugged with syringes next to them.
 - December 2, 2021 (3 am) the tenant and several guests were shouting outside units B3, B4 and B5.
5. The residential complex is a rooming house consisting of 33 rooms intended exclusively for adult males.

Legislation and Analysis

6. Subsection 64(1) of the Act states:

A landlord may give a tenant a notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.

7. The allegations in the Landlord's application and behaviour following the application were all well documented in the Landlord's evidence and substantiated by the oral testimony of two witness who live in the residential complex.
8. The Landlord receives complaints almost daily from other tenants, with respect to the conduct of the Tenant. Blocking access to exits, loud noise, shouting, overcrowding his unit with guests, drug use in common areas by him and his guests, the Tenant and guests sleeping in hallways and common areas, assault and aggressive behaviour towards the Landlord and other tenants, granting access to the residential complex to his guests.
9. It was the evidence of the Landlord's witness, Jason Miles that the Tenant assaulted him and is hostile and threatening towards him, repeatedly calling him derogatory names. He told the Board that the Tenant has a constant flow of visitors and often has 4-5 people in

his unit, all believed to be homeless. These individuals often stay for extended periods and add strain on the amenities that are shared among the tenants. The Tenant and his guests are loud and cause daily disturbances at all hours of the day and night.

10. The witness submitted that there were no issues in the rooming house prior to the Tenant moving in.
11. It was the evidence of the Landlord's witness Taylor Richard, that he was hospitalized following a targeted assault on him by the Tenant. He feels threatened and unsafe around him. He also told the Board that the Tenant allows guests who are drug users into the premises and cause disturbances daily with other tenants and leave needles and drug paraphernalia all over the house.
12. The Landlord and the witnesses told the Board that the police and paramedics are called multiple times per week because of the conduct of the Tenant and his guests. They added that this ongoing behaviour is creating difficult living conditions for the other tenants.
13. Based on the totality of the evidence and testimonies given by the Landlord and the witnesses, I find that on a balance of probabilities, the Tenant's conduct substantially interferes with the other tenant's reasonable enjoyment of the residential complex and the Landlord's lawful right, privilege or interest.

Section 83 Considerations

14. The Landlord requested a standard order terminating the tenancy between the Landlord and the Tenant as the behaviour has been ongoing and has continued since filing the application.
15. The behaviour of the Tenant is also impacting the other tenant's in the residential complex, creating a hostile and unsafe environment as submitted by the witnesses.
16. The residential complex comprises of multiple rental units, and I must weigh the impact of the Tenant's conduct on the other tenants that reside in the residential complex. The incidents described are not isolated or limited and have been ongoing. When terminating a tenancy, I am required to consider "all" of the circumstances and eviction should be a last resort.
17. I am satisfied that the Landlord has given the Tenant ample opportunity to correct his behaviour and is only now pursuing eviction as a remedy of last resort.
18. The Tenant was not present at the hearing to provide evidence regarding his circumstances. However, the Landlord told the Board that the Tenant is supported by ODSP and the Tenant's social worker has not been successful in speaking to him.
19. The Landlord told the Board that the Tenant was homeless for a number of years prior to moving into the rental unit.
20. Given the date this order is being issued, the Tenant has already had the benefit of additional time to seek alternative housing. Therefore, I find that a standard order is not unfair.

21. 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.
22. The Landlord has incurred the cost of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Daily Compensation

23. The Tenant was required to pay the Landlord \$4,026.58 in daily compensation for use and occupation of the rental unit for the period from November 30, 2021 to June 30, 2022.
24. Based on the Monthly rent, the daily compensation is \$18.90. This amount is calculated as follows: \$575.00 x 12, divided by 365 days.
25. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
26. There is no last month's rent deposit.

Damage

27. Based on the uncontested evidence, I find that the Tenant wilfully or negligently caused undue damage to the rental unit or residential complex.
28. On November 30, 2021 at 7:55 p.m., the Tenant was seen breaking the glass in the window of his rental unit in order to get access to his unit. The Landlord provided receipts for the cost of repairing the broken window.
29. The Landlord's witnesses confirmed that he saw the Tenant break the window.
30. The Landlord has incurred reasonable costs of \$400.00 to repair the damage.

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 21, 2023.
2. If the unit is not vacated on or before January 21, 2023, then starting January 22, 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 22, 2023.
4. The Tenant shall pay to the Landlord \$4,026.58, which represents compensation for the use of the unit from November 30, 2021 to June 30, 2022, less the rent deposit and interest the Landlord owes on the rent deposit.
5. The Tenant shall also pay the Landlord compensation of \$18.90 per day for the use of the unit starting July 1, 2022 until the date the Tenant moves out of the unit.
6. The Tenant shall pay to the Landlord \$400.00, which represents the reasonable costs of repairing the damaged property.

7. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
8. The total amount the Tenant owes the Landlord is \$4,612.58.
9. If the Tenant does not pay the Landlord the full amount owing on or before January 21, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 22, 2023 at 5.00% annually on the balance outstanding.

January 10, 2023
Date Issued

Natalie James
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 July 22, 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.