



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

Citation: The Young Women’s Christian Association of Greater Toronto v Painter, 2023 ONLTB 14032

Date: 2023-01-03

File Number: LTB-L-037691-22

In the matter of: 722, 150 ELIZABETH ST
TORONTO ON M5G0B1

Between: The Young Women’s Christian Association of Greater Toronto Landlord

And

Tina Marie Painter Tenant

The Young Women’s Christian Association of Greater Toronto (the 'Landlord') applied for an order to terminate the tenancy and evict Tina Marie Painter (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 a person the Tenant permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex.

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

This application was heard by videoconference on November 3, 2022.

Only the Landlord’s Agent, Tammy Hutch8inson, and the Landlord's Legal Representative Natasha Mizzi, attended the hearing.

Stephen Li, another Agent of the Landlord, attended as an observer. Emily Duffy attended as a witness for the Landlord.

As of 10:08 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. At the beginning of the hearing, the Landlord's Legal Representative submitted that the Landlord was only seeking a conditional order based on the settlement terms the Landlord and Tenant arrived at prior to the hearing.

2. As the Tenant was not presented for the hearing, the matter proceeded on its merits and the order is written based on the terms of settlement between the parties. These terms were accepted as Posy Hearing Submission along with the Certificate of Service indicating that the agreed upon terms were served to the Tenant on December 15, 2022.
3. For the reasons that follow, I find
4. The Tenant is in possession of the rental unit.
5. The monthly rent is \$1,137.00.
6. There is no last month's rent deposit.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Notices

8. On June 3, 2022 the Landlord served the Tenant with a N5 and N7 Notice of Eviction. The notices were dated June 3, 2022 and set out a termination date of June 30, 2022.
9. Both notices seek to terminate the tenancy for numerous incidents from November 24, 2020 through April 13, 2022 detailed in Schedule A attached to the notices. The incidents/behaviour are with respect to the Tenant substantially interfering with the reasonable enjoyment of the Landlord and other tenants, substantially interfering with the Landlord's lawful rights privileges and interests in the residential complex and/or the rental unit, and seriously impairing the safety of another person in the residential complex. Specifically:
 - a) Breaching the lease, the *Residential Tenancies Act, 2006*, and municipal property standards and fire safety laws;
 - b) Obstructing access to and from the rental unit;
 - c) Not maintaining the unit in a state fit for habitation;
 - d) Creating serious fire and tripping hazards; and
 - e) Interfering with the Landlord's legal interest in the state of the rental unit and the residential complex which arise from the Landlord's obligation under section 20 of the *Residential Tenancies Act, 2006*.

Evidence and Testimony

10. The Landlord entered a 74-page evidence package containing the related documentary and pictorial evidence associated to each claim noted above.
11. Tammy Hutchinson (TH), the Associate Manager of the YWCA Housing Support Program, testified to letters given to the Tenant with respect to her unit and numerous pictures taken on December 15, 2020, when the initial inspection took place, and March 5, 2021, after the Fire Inspection Order was issued by the Toronto Fire Department on February 18, 2021. And the inspection done on April 26, 2021, the compliance date of the Fire Department's order.

12. TH also testified that that the Tenant goes up and down with respect to the amount of clutter in her unit, but as of the hearing date, it is not up to the ceiling as it has been in the past. The problem now is with respect to pests; the Tenant needs to continue to declutter so the Landlord can do proper pest control. The Landlord enlisted FreshStart to assist the Tenant, an outside agency who assists people with hoarding issues.
13. Emily Duffy (ED), a Housing Worker with the YWCA, testified that part of her responsibilities is helping tenants maintain safe housing. She testified to letters and pest control reports given to the Tenant, as well as pictures taken of the unit as recent as June 14, 2022.
14. ED further testified that the unit still has various areas with excessive clutter. She is still working with the Tenant, but the unit is not yet at the state where proper pest control treatments can be done; she plans to continue working with the Tenant.

Analysis

N5 substantially interfered with the reasonable enjoyment of others and/or substantially interfered with the Landlord's lawful rights, privileges and interests.

15. Section 64 of the *Residential Tenancies Act, 2006* (the 'Act') states:

(1) A landlord may give a tenant 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.

(3) The notice of termination under subsection (1) is void if the tenant, within seven days after receiving the notice, stops the conduct or activity or corrects the omission.

16. The N5 notice was served to the Tenant on June 3, 2022, therefore the Tenant had until June 10, 2022 to void the notice by decluttering the unit and bringing it into a state that was fit for habitation and not contrary to fire and safety regulations. Based on the testimony and pictorial evidence given about the June 14, 2022 inspection, the Tenant did not comply and therefore the Landlord filed its application based on the N5 notice. The Landlord also filed the application based on a N7 notice, discussed below.
17. The behaviour complained of is with respect to the poor state of cleanliness of the Tenant's unit which contravenes fire and safety codes, and also affects the Landlord's ability to maintain its obligations to maintain the unit in a state fit for habitation and pest free. The behaviour complained of was established through TH and ED's testimony and

corresponding pictures and documents. The documents included an Inspection Order dated March 11, 2021, from the Toronto Fire Department that noted the following:

The living room and hallway were observed to contain excess storage of combustible material that may negatively impact the containment of the fire and adversely affect the means of egress for the occupant(s) and first responders.

Should a fire occur, the occupant(s) evacuation may be delayed, prevented or be greatly impeded and could also hamper firefighter entry, suppression and rescue.

Excessive amounts of combustible material are stored in the dwelling unit such that the movement of smoke from a fire may be impeded. Early notification will be affected and the time for the occupant to safely evacuate will be reduced. included the fact that the Tenant's unit is constantly under surveillance and regularly visited due to the antisocial activities taking place.

Recent pictures of the unit establish that at the time of hearing, although improved, the unit was still in a poor state with respect to clutter and cleanliness.

18. Therefore, based on the uncontested testimony and evidence before me I find the Tenant or someone permitted in the building by the Tenant substantially interfered with the reasonable enjoyment of others and substantially interfered with the Landlord's lawful rights, interests and privileges.

N7 Notice – serious impairment of safety

19. Section 66(1) of the Act states:

A landlord may give a tenant notice of termination of the tenancy if,

(a) An act or omission of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant seriously impairs or has seriously impaired the safety of any person; and

(b) The act or omission occurs in the residential complex.

20. According to the caselaw, the cogency of the evidence should be commensurate with the gravity of the allegations (*Bogey Construction Ltd. v. Boileau* (24 April 2002), Court File No. 01-DV-606 (Ont. Div. Ct.)), and the evidence should be scrutinized with greater care where the allegations involve conduct that is criminal or morally blameworthy, but there is no different standard of proof to be applied (*Continental Insurance Co. v. Dalton Cartage Co. Ltd.*, [1982] 1 S.C.R. 164).

21. Here, the allegation of impaired safety is with respect to the unit creating a fire and safety hazard to the Tenant and all tenants of the building, as detailed by the Fire Department's inspection.
22. I find based on the uncontested testimony and evidence before me, the Tenant seriously impaired the safety of others due to the poor state of her unit both prior to and at the time of hearing.

Relief from Eviction

23. 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 grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act. The agreed upon terms are a fair resolution to the issues raised in the Landlord's application. I accept the Landlord's Legal Representative's submission that the section 78 breach clause was explained to the Tenant.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
2. The Tenant shall restore the rental unit to a safe, clean and reasonable living condition by March 31, 2023. This shall include but is not limited to:
 - a) no combustible items near or on the stove;
 - b) reduce the amount of combustible materials/excessive clutter in the unit to a level acceptable to YWCA Toronto (e.g. rooms can be used for their intended purposes);
 - c) pathways must be clear to all exits and windows and of a minimum clearance of 1 meter;
 - d) egress pathways must be clear of any obstructions from the floor to the ceiling to provide a safe means of egress for emergency responders;
 - e) stacked items are stacked securely and are not stacked higher than approximately 1 meter;
 - f) all exits and entranceways to the unit must be clear and accessible (e.g. all unit doors open all the way); and
 - g) all rooms shall be kept in a reasonable state of cleanliness;

3. the Tenant shall not refuse pest control treatments and shall prepare the rental unit for pest control treatment.
4. The Landlord shall provide the Tenant with 24 hours' notice of entry and will inspect the unit on April 3, 2023, to assess compliance with paragraph 2 above.
5. If the Tenant fails to comply with the conditions set out in paragraphs 2 and 3 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.
6. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
7. If the Tenant does not pay the Landlord the full amount owing on or before April 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated May 1, 2023, at 5.00% annually on the balance outstanding.

January 3, 2023

Date Issued

Diane Wade

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.