



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

Citation: Braga v Lodwyk-Noel, 2023 ONLTB 13699

Date: 2023-01-03

File Number: LTB-L-041563-22

In the matter of: rear apartment, 786 NELSON ST
LONDON ON N5Z1K3

Between: Carlos Braga Landlord

And

AJ Lodwyk-Noel Tenant

Carlos Braga (the 'Landlord') applied for an order to terminate the tenancy and evict AJ Lodwyk-Noel (the 'Tenant') because 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; and, because 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.

This application was heard by videoconference on December 5, 2022.

Only the Landlord, the Landlord's representative T. Schoenleber and the Landlord's witness: Robin McLeod (RM) attended the hearing. As of 1:15pm, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated on January 8, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On June 15, 2022, the Landlord gave the Tenant an N6 and N7 notice of termination, both containing a termination date of July 7, 2022. The notices of termination contain the following allegations: that on April 19, 2022, the Tenant had a loud party and assaulted a tenant; and, that on May 11, 2022, the Tenant stabbed another tenant.
4. The residential complex contains three rental units. The Tenant resides in the rear unit and shares a wall with the Landlord's witness, RM, who resides in the front unit.
5. The first incident occurred on April 19, 2022. RM testified that at 3:30am, the Tenant was having a party when she overheard the basement tenant knock on the Tenant's rear rental

unit and ask the Tenant to turn the music down and stop banging. At that point, RM, testified she overheard the Tenant assault the basement tenant. She stated she overheard the confrontation through her walls and then she called the police. While RM did not see the purported assault, RM testified she spoke with the basement tenant afterwards. Her evidence was corroborated by the Landlord who attended at the residential complex and also spoke with the basement tenant. In this regard, the Landlord testified the basement tenant was struck by the Tenant, as evidenced by his black eye.

6. The second incident occurred a few weeks later on May 11, 2022. RM testified she was sitting in the backyard with a friend when the Landlord came to the residential complex and advised the Tenant he was going to be served with an eviction notice due to his excessive noise and partying. RM stated the Tenant immediately got upset at RM for previously complaining to the Landlord and in retaliation, he retrieved a knife from his rental unit and stabbed RM while she was speaking with the Landlord on the residential complex. RM testified she immediately called the police and the Tenant was charged with assault with a weapon. The Landlord testified he witnessed the stabbing and ultimately tried to push RM out of harm's way when she was attacked.
7. Based upon RM and the Landlord's uncontested evidence, I find on a balance of probabilities that on April 19, 2022 and May 11, 2022, the Tenant seriously impaired the safety of another person in the residential complex and committed the illegal act of assault at the residential complex.

Section 83

8. Section 83 requires that I consider all the circumstances, including the Tenant's and the Landlord's situations to determine if it would be appropriate to grant section 83 relief from eviction. There are no children living in the rental unit and the Landlord advised that as recently as a few weeks ago, the Tenant committed further acts of violence.
9. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and given the seriousness of the Tenant's conduct, find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The Tenant did not attend the hearing, and thus did not provide any evidence that may be relevant to my determination under s. 83

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 8, 2023.
2. If the unit is not vacated on or before January 8, 2023, then starting January 9, 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 9, 2023. The Sherrif is requested to expedite the enforcement of this order.
4. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.

5. If the Tenant does not pay the Landlord the full amount owing on or before January 8, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 9, 2023 at 5.00% annually on the balance outstanding.

January 3, 2023
Date Issued

Peter Nicholson
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 9, 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.