



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

Citation: Pineda v Vincent, 2022 ONLTB 14353

Date: 2022-12-20

File Number: LTB-L-016363-22

In the matter of: Lower Unit, 172.5 Sheridan Street
Brantford ON N3S4P8

Between: Jorge Pineda Landlord

And

Jonathan Vincent Tenant

2022 ONLTB 14353 (CanLI)

Jorge Pineda (the 'Landlord') applied for an order to terminate the tenancy and evict Jonathan Vincent (the 'Tenant') because the Tenant has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant.

The Landlord also applied for an order to terminate the tenancy and evict the Tenant because and the Tenant has seriously impaired the safety of any person in the residential complex.

The Landlord also applied for an order to terminate the tenancy and evict the Tenant because the Landlord requires vacant possession of the rental unit in order to do major repairs or renovations to the unit.

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 December 12, 2022.

The Landlord, the Landlord's witness, Mackenzie Gardner, and the Tenant attended the hearing.

Determinations:

1. The Tenant was in possession of the rental unit on the date the application was filed.
2. The monthly rent is \$1,425.00.
3. There is no last month's rent deposit.
4. The Tenant is currently renting 2 floors of a 3 floor rental property.

First N5 Notice of Termination

5. On March 12, 2022, the Landlord gave the Tenant an N5 notice of termination with the termination date of April 30, 2022. The Landlord claims the Tenant has substantially interfered with another tenant's reasonable enjoyment of the residential complex.
6. The notice contains the allegation that on March 11, 2022, Tenant was smoking inside the downstairs unit and the upstairs tenant, Mackenzie Gardner, who was pregnant at the time, complained to the Landlord about the smell coming through the vents. The Landlord's witness, Mackenzie Gardner, did confirm that when the Tenant was asked to stop, the Tenant refused.
7. According to the N5 notice, since this was the first N5 notice, the Tenant had 7 days to correct his behaviour or face a possible eviction.
8. The Landlord stated that the lease states that the residential building is non-smoking and the Tenant signed the lease agreeing to these terms. The Landlord's witness confirmed that the Tenant was smoking inside the rental unit on March 11, 2022, which contravened the lease agreement.
9. The Tenant responded that he has not smoked inside the unit since April 1, 2022 and has smoked outside ever since. The Landlord's witness also confirmed the Tenant's statement about no longer smoking inside the rental unit.
10. Therefore, although the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act) within 7 days, he did correct his behaviour within 20 days and has not repeated it since.
11. Based on the testimony presented, I find that the Tenant has not smoked inside the rental unit for over 8 months and as such, I am not willing to consider eviction on this matter.

Second N5 Notice of Termination

12. The second, non-voidable N5 notice was served on May 25, 2022, with a termination date of June 30, 2022, pursuant to section 68(1) of the Act, which states:

68(1) A landlord may give a tenant notice of termination of the tenancy if,
(a) a notice of termination was given to the tenant under section 62, 64 or 67; and
(b) more than seven days but less than six months after the notice mentioned in clause (a) was given to the tenant, an activity takes place, conduct occurs or a situation arises that constitutes grounds for a notice of termination under section 60, 61, 62, 64 or 67, other than an activity, conduct or a situation that is described in subsection 61(1) and that involves an illegal act, trade, business or occupation described in clause 61(2)(a).

[Emphasis added.]

13. In this case, the first voidable N5 notice was given to the Tenant on March 12, 2022. Therefore, pursuant to subsection 68(1)(b), only alleged conduct that occurred during the period March 20, 2022 to September 20, 2022 can be properly included in the second N5.
14. The Landlord's second N5 notice includes allegations of substantial interference of the lawful rights of the Landlord as the Tenant changed the locks without consent of the Landlord. On March 30, 2022, the Landlord went to the rental property to pick up the keys for the new lock that the Tenant had changed due to a roommate/subtenant that had moved out.
15. The Landlord stated that this was second time that the Tenant had done this, however, no notice was ever served for the previous occurrence.
16. The Tenant submitted that it was smart to secure the rental unit and not have a previous roommate with access to his belongings after that person had moved out. The Tenant added that he did give the keys to the Landlord after the work was complete.
17. Based on the testimony presented, I find that although the Tenant acted on his own accord and did not consult the Landlord before changing the lock, there was no harm done. Therefore, I am not willing to consider eviction for this issue.

N7 Notice of Termination

18. On November 9, 2022, the Landlord gave the Tenant an N7 notice of termination with the termination date of November 21, 2022. The Landlord claims that the Tenant has seriously impaired the safety of another person living in the residential complex by shutting off the furnace denying the tenant living upstairs and her 8-month baby heat for more than 2 weeks.
19. However, upon reviewing the certificate of service for this notice, the Landlord's agent (wife) signed the certificate which stated that the notice was served on November 15, 2022, which is only 6 days before the date of termination listed on this notice.
20. According to section 66 of the *Residential Tenancies Act, 2006* (the 'Act'), an N7 must be served a minimum of 10 days before the date of termination. Therefore, this notice is invalid and cannot proceed before the Board.

N13 Notice of Termination

21. On March 11, 2022, the Landlord gave the Tenant an N13 notice of termination with the termination date of July 31, 2022. The Landlord, in good faith, claims vacant possession of the rental unit is required for very extensive repairs and/or demolition of the current rental unit.

22. The Landlord explained that he was going to be converting the Tenant's rental unit into 2 separate rental units so that the rental unit would no longer exist in its current form. The living space that the Tenant currently has would be cut by almost half.
23. The Landlord presented into evidence a copy of the building permit issued by the City of Brantford on July 29, 2022, as well as professional engineering plans and blueprints of the work that is to be done to the property. These plans take into account both floors that the Tenant is currently renting as well as the demolition, framing, ductwork, plumbing, drainage system and fire protection system work that is needed.
24. The Landlord testified that he gave the Tenant a cheque for \$1,425.00 on May 25, 2022, as is the required compensation for this application. However, the Landlord added that the Tenant refused to accept the compensation and demanded as much as \$20,000.00 in order to get him to leave. This fact was later corroborated by the Tenant at the hearing. The Landlord further stated that a later offer of \$5 000.00 was also refused by the Tenant.

Analysis

25. Section 50(1) and 50(2) of the *Residential Tenancies Act, 2006* (the 'Act') state:
- 50(1) A landlord may give notice of termination of a tenancy if the landlord requires possession of the rental unit in order to,
- (a) demolish it;
 - (b) convert it to use for a purpose other than residential premises; or
 - (c) do repairs or renovations to it that are so extensive that they require a building permit and vacant possession of the rental unit.
- 50(2) The date for termination specified in the notice shall be at least 120 days after the notice is given and shall be the day a period of the tenancy ends or, where the tenancy is for a fixed term, the end of the term.
26. In *Two Clarendon Apartments Limited v. Sinclair*, 2019 ONSC 3845 (CanLII), the Courts stated:
- (a) In a situation where the rental unit continues to exist, albeit in an extremely altered form, it is possible for the tenant to exercise a right of first refusal, because the rental unit is still there: the tenant may move back and continue the tenancy. **In a situation where the rental unit is gone, it is not possible for the tenant to exercise a right of first refusal: the rental unit is no longer there and so the tenant cannot move back.** The fact that the Act distinguishes renovations and demolitions by the tenant's right of first refusal shows that the intention of these sections of the Act is to preserve tenancies where it is possible to do so.
 - (b) Accordingly, a project will be defined as a renovation under the Act in a case where it is possible for the tenant to move back into the unit and a project will be defined as a demolition where it is not possible for the tenant to move back into the unit.

[Emphasis added.]

27. Based on the testimony and evidence presented, I am satisfied that the Landlord has met the criteria set out in section 50 of the Act. The Landlord gave more than 120 days notice

for termination of tenancy, paid compensation to the Tenant and had a building permit and engineered plans issued before the date of termination.

28. Since the Landlord intends to do renovations that are so extensive, I am satisfied that the rental unit in its current state will not exist after the completion of the work and as such the Tenant will not be able to move back in.

29. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Relief from eviction

30. 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 postpone the eviction until February 28, 2023 pursuant to subsection 83(1)(b) of the Act. This will allow the Tenant the time to find another place to live.

31. This order contains all of the reasons in this matter and no further reasons will be issued.

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 **February 28, 2023**.
2. If the unit is not vacated on or before February 28, 2023, then starting March 1, 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 March 1, 2023.
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 February 28, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 1, 2023, at 5.00% annually on the balance outstanding.

December 20, 2022
Date Issued

Michael Di Salle
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 September 1, 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.