



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

Citation: London & Middlesex Community Housing v Culligan, 2022 ONLTB 14203

Date: 2022-12-20

File Number: LTB-L-018963-22

In the matter of: 813, 580 DUNDAS ST
LONDON ON N6B1W9

Between: London & Middlesex Community Housing Landlord

And

Deanna Culligan Tenant

London & Middlesex Community Housing (the 'Landlord') applied for an order to terminate the tenancy and evict Deana Culligan (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; and
- 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 10, 2022.

The Landlord's Legal Representative, Cameron Burgess, the Landlord's Agent, Breanna Dartch (BD), and the Tenant attended the hearing. Cecilia Inguanse appeared at the hearing as support for the Tenant.

Determinations:

1. By way of background, the residential complex is an apartment building that has 9 floors and 136 units. This is a month-to-month tenancy in which rent is due on the first of the month in the amount of \$139.00.
2. The Landlord's L2 application is based on a first voidable N5 notice of termination ('1st N5 Notice'), given to the Tenant on January 4, 2022, and a second non-voidable N5 notice of termination ('2nd N5 Notice') and an N7 notice of termination ('N7 Notice'), given to the Tenant on March 18, 2022 in accordance with the *Residential Tenancies Act, 2006* (the 'Act').

3. The 1st N5 Notice alleges that after receiving multiple verbal complaints from other tenants in the building, the Landlord reviewed the CCTV footage from December 4, 2021 at 3:18 a.m. and viewed a guest of the Tenant exiting the rental unit and urinating on the floor in the common area and again in the hallway. The guest is then seen going back into the Tenant's rental unit. The N5 Notice also alleges that on December 7, 2021, the Tenant is seen on the CCTV footage allowing guests into her rental unit who are prohibited from being in the residential complex.
4. On a first N5 notice of termination, a tenant is afforded the opportunity to void the notice by correcting the behaviour or stopping the activity within seven days of being served with the N5 notice. In this particular case, the voiding period was from January 10, 2022 to January 16, 2022.
5. The Landlord's Legal Representative submitted that no further complaints or incidents occurred during the period of January 10, 2022 to January 16, 2022. I am therefore satisfied that the Tenant voided the 1st N5 Notice. The matter proceeded based on the 2nd N5 Notice and the N7 Notice.
6. The 2nd N5 Notice and the N7 Notice, served on rely on identical detailed schedules outlining the particulars of the allegations against the Tenant. As the schedules refer to the same incidents, the notices will be considered together.
7. The 2nd N5 Notice and the N7 Notice contain the allegations that on February 27, 2022, the Tenant and her guests engaged in a verbal altercation with another tenant and guest. This altercation resulted in the Tenant's guest igniting an unknown substance and throwing it into the hallway outside of the Tenant's unit causing a fire on the wall.
8. BD testified that she reviewed the CCTV footage from February 27, 2022 commencing at 12:01 a.m. and ending at approximately 3:20 a.m. She testified that during this period, the Tenant can be seen allowing several people into her unit. She testified the same people including the Tenant can be seen arguing with the tenants in another unit and the Tenant can be seen holding a knife. She testified that at 3:12 a.m. a lit object was thrown into the hallway from the Tenant's unit causing a small fire.
9. The Landlord's Legal Representative submitted a series of videos as evidence which corroborate BD's testimony.
10. The Tenant stated that she does not dispute the allegations in the notices. She testified that the other tenants and their guests were harassing her thus her guests got involved in the altercation in the hallway. She testified that she did have knife in her hand but was only attempting to scare the other tenants in an effort to stop the harassment. She testified that she did not know who threw the unknown substance and was very upset that a fire had been started. The Tenant stated that she was not aware that some of her guests were not allowed in the residential complex but has banned those who were involved including the guest who urinated in the hallway. The Tenant testified that if she had been aware that some of her guests were not allowed in the building, she would have not let them in.

Relief from eviction

11. Pursuant to s. 83(2) of the Act, the Board must consider all of the circumstances before granting an eviction order.
12. The Tenant seeks a chance to preserve her eighteen-year tenancy. She testified that this one an isolated incident, that she took responsibility for her actions and the actions of her guests and is confident that it will not recur as she has banned those guests from attending at her rental unit. She stated that she would like to be made aware of who is not allowed in the building so she can ensure they no longer come to the residential complex. The Tenant is not working. She is in receipt of ODSP and suffers with depression. She stated that similar occurrences would not happen again.
13. The Landlord's Legal Representative submitted that the Landlord opposes the Tenant's request for relief with respect to preserving the tenancy as the Landlord is concerned about the safety of the other residents given the wilful conduct of the Tenant and the Tenant's guests. He submitted the Landlord has a duty to provide a safe environment for all the residents and the actions of the Tenant's guests starting a fire was a serious impairment of safety. The Landlord is seeking an 11-day eviction order.
14. Clearly, eviction in these circumstances would have a substantial negative impact on the Tenant. She would lose her home which has been her home for eighteen years and may potentially regress in terms of her health.
15. That being said, the Landlord has a legitimate reason to be concerned with the Tenant's behaviour and its ability to meet its obligation to their other tenants to provide a safe living environment.
16. With respect to the issue of whether the Tenant is likely to commit further acts of this nature, the evidence suggests the Tenant's behaviour was that of helping others and the actions of her guests was unforeseen. She accepts that her behaviour was unacceptable and took responsibility for her actions and the actions of her guests.
17. In light of the above and given that there have been no other complaints about the Tenant's behaviour in the residential complex, I find that it would not be unfair to grant relief from eviction provided no further incidents occur.
18. Thus, while I find that the Tenant has substantially interfered with the reasonable enjoyment of another tenant and has seriously impaired the safety of another person, after considering all of the circumstances as I am required to do so pursuant to s. 83(2), I also find that it would not be unfair to grant conditional relief from eviction in accordance with s. 83(1)(a) and s. 204(1) of the Act.
19. Finally, the Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
20. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

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 refrain from allowing any person onto the residential complex who is banned or trespassed from the premises.
3. The Landlord shall provide the Tenant with adequate information of those persons who are banned or trespassed from the residential complex.
4. The Tenant, occupants, and/or the Tenant's guests shall:
 - a) refrain from committing any acts that substantially interfere with the reasonable enjoyment of the other residents in the residential complex including but not limited to yelling, screaming, and/or arguing in the hallways and common areas of the residential complex ; and
 - b) refrain from committing any acts that seriously impair the safety of another person including but not limited to, threatening, use of weapons, and/or physical altercations with other residents, occupants, or guests.
5. If the Tenant fails to comply with the conditions set out in paragraphs 2 and 4 of this order, and for the duration of the tenancy, 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 December 31, 2022, the Tenant will start to owe interest. This will be simple interest calculated from January 1, 2023 at 5.00% annually on the balance outstanding.

December 20, 2022
Date Issued

Susan Priest
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.