



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

Citation: LONDON & MIDDLESEX COMMUNITY HOUSING INC v Rikhtegarzadeh, 2022
ONLTB 14133

Date: 2022-12-14

File Number: LTB-L-002367-21

In the matter of: 1202, 241 SIMCOE ST
LONDON ON N6B3L4

Between: LONDON & MIDDLESEX COMMUNITY HOUSING INC Landlord

And

David Rikhtegarzadeh Tenant

LONDON & MIDDLESEX COMMUNITY HOUSING INC (the 'Landlord') applied for an order to terminate the tenancy and evict David Rikhtegarzadeh (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 someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises;
- 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;
- 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 Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully caused undue damage to the premises.

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

LONDON & MIDDLESEX COMMUNITY HOUSING INC (the 'Landlord') also applied for an order requiring David Rikhtegarzadeh (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.

On July 12, 2022, the Board issued an endorsement that the application will be heard de novo.

This application was heard by videoconference on August 23, 2022.

Only the Landlord's Representative, Cameron Burgess attended the hearing. Devon Richardson,

witness for the Landlord also attended the hearing. As of 9:45 am, 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. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, relief from eviction is denied.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N6, N7 and N5 Notice of Termination

3. On December 22, 2021, the Landlord gave the Tenant an N5, N6 and N7 notices of termination deemed served on December 27, 2021, terminating the tenancy on January 17, 2022. The notices of termination contains the following allegations: on November 27, 2021 the Tenant caused a fire in the unit that seriously impaired the safety of another person in the rental unit and residential complex; the Tenant committed an illegal act of arson; and has wilfully caused undue damage to the premises.

Illegal Act, Impairment of Safety and Damage

4. The Landlord's witness testified, that the fire alarm was triggered on November 27, 2021, around midnight. The fire department broke the door and removed the Tenant from the unit. The witness spoke with attending officers who reported the Tenant lit a fire to his pillow and tried to barricade himself in the unit.
5. The press release and court report confirm the Tenant was charged with arson.
6. The Tenant was taken to hospital and fire fighter was injured as confirmed by CTV News London article.
7. The entire unit was damaged and lost including electrical, plumbing, drywall, flooring, washroom, fixtures, including the roof tar that was melted. A report from Element Forensic Engineering Report dated December 7, 2021 summarizes damages caused by heavy smoke and water. The witness testified damage was catastrophic. The Landlord obtained a quote through the insurance adjuster, Winmar London Restoration and estimated net claim is \$58, 286.25. The Landlord deductible is \$25,000.00.
8. Based on the evidence before me, I find the Tenant has committed an illegal act in the rental unit contrary to section 434 of the Criminal Code by wilfully or negligently causing damage by fire to property that is owned by the Landlord. The illegal act is serious and impacts the character of the residential complex. The Tenant has also seriously impaired his own safety, firefighters and risked the safety of other tenants in the building.

Compensation for damage:

9. The Landlord has proven that the Tenant wilfully or negligently caused undue damage to the rental unit or residential complex. The Landlord has incurred reasonable costs of \$25,000.00 (insurance deductible) to repair the damage and replace property that was damaged and cannot be repaired.

Relief from Eviction:

10. 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. As of the date of the hearing, the Tenant did not return to the rental unit after the fire. The Landlord is aware that there's substance abuse involved but they were not provided any medical information about any mental health condition in order to access accommodation. The Landlord received the rent payment from a third party, Ontario Works Program, which stopped September 2021. The Tenant has not contacted the Landlord about returning to the unit which suggests he's not interested in preserving this tenancy.

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 December 19, 2022.
2. The Tenant shall pay to the Landlord \$25,000.00, which represents the reasonable costs of repairing the damage and replacing the damaged property.
3. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
4. The total amount the Tenant owes the Landlord is \$25,186.00.
5. If the Tenant does not pay the Landlord the full amount owing on or before December 19, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 20, 2022 at 4.00% annually on the balance outstanding.
6. If the unit is not vacated on or before December 19, 2022, then starting December 20, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
7. 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 December 20, 2022.

December 7, 2022

Date Issued

Sandra Macchione

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 June 20, 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.