



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

Citation: Ringare Investments Limited v Andersen, 2022 ONLTB 13686

Date: 2022-12-08

File Number: LTB-L-033869-22

In the matter of: 107, 111 MARKET ST
HAMILTON ON L8R3K2

Between: Ringare Investments Limited Landlord

And

Inge Andersen Tenant

2022 ONLTB 13686 (CanLII)

Ringare Investments Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Inge Andersen (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 29, 2022.

The Landlord's Agent Marilyn Peacock Ellsworth, the Landlord's Legal Representative Martin Zarnett and Faith McGregor and the Tenant attended the hearing. Prior to the commencement of the hearing, the Tenant had spoken to Tenant Duty Counsel.

Determinations:

Adjournment request:

1. Prior to the commencement of the hearing, the Tenant requested an adjournment as she wanted to obtain legal assistance, she was completely overwhelmed with the situation and wanted additional time to bring the apartment back "up to par again". The Tenant stated that she was exhausted due to having had long COVID, was 75 years old and had just recently secured cleaners to assist in cleaning the rental unit. The Tenant admitted that "the circumstances are far from satisfactory" and acknowledged the condition of the rental unit.

2. The Landlord's Legal Representative opposed any adjournment of this matter due to the seriousness of the matter. It was submitted that the notices of termination were served on the Tenant in June of this year, the Tenant has had ample time to respond to the notices and what the Tenant is really seeking is relief from eviction.
3. Having considered the reason for the adjournment request, the position of the parties, the issues in the applications, the history of the proceeding, the adjournment was denied as the Tenant was aware of the hearing but appeared to have not acted on it in a timely manner, she did receive legal advice prior to the hearing and the nature of the applications, in my view, warranted this matter to be heard expeditiously.

The hearing:

4. The N5 and N7 notices each had schedules attached to them. As the Tenant had stated that she agreed with the allegations contained in both notices and was requesting time to rectify the situation, at the Board's request, the Tenant took the time to review the notices with the attached schedules to ensure she did not dispute the notices. Upon reviewing the notices and the schedules, the Tenant agreed with what was being alleged in both of the notices.
5. Based on the acknowledgement and agreement of the Tenant, I am satisfied that the Tenant substantially interfered with another tenant's or the Landlord's reasonable enjoyment of the rental unit and/or lawful rights, privileges or interests and that the Tenant's behaviour has seriously impaired the safety of another person and that this behaviour occurred in the residential complex.
6. As the Tenant admitted to the allegations contained in the N5 and N7 notices, the next issue for me to consider is relief from eviction.

Background and Landlord's Position:

7. Essentially, both notices state that the Tenant has kept the rental unit in an extreme state of uncleanness and foul odours emanate from the rental unit. Attempts were made by the Landlord to have the Tenant clean the rental unit to no avail.
8. It was submitted that after a plumbing repair on March 8, 2022, a letter was sent to the Tenant on March 9, 2022 identifying a potential health hazard and that the rental unit was in a cluttered state. The letter reminded the Tenant of her obligations under the tenancy agreement and pointed out potential violations with the Ontario Fire Code. The Landlord also provided contact information for a company that would be able to assist the Tenant in de-cluttering the rental unit.
9. A further letter was provided to the Tenant on April 19, 2022 where the issue of the clutter and cleanliness in the rental unit was addressed. At that time, the Landlord noted the rental unit was not in a state of ordinary cleanliness and was extremely cluttered. The Landlord offered assistance by stating contact could be made with Community Care Access and/or the Local Health Integration Network in an attempt to provide supports to the Tenant in her day-to-day living and in cleaning the rental unit.

10. On April 27, 2022, the Landlord emailed the Tenant to advise that they had been in contact with St. Matthews House and would have someone contact the Tenant. The Tenant responded by thanking the Landlord's Agent on the same day.
11. It was also submitted that on May 22, 2022, due to the foul odour emanating from the rental unit, police officers and paramedics attended the rental unit to determine if someone was deceased in the rental unit.
12. The Landlord's Legal Representative submits that the foul odour causes a potential health hazard, a potential fire code violation and it has affected other tenants in the residential complex.
13. The Landlord's Legal Representative submitted a number of photographs taken June 13, 2022 and later on November 8, 2022 which depict the condition of the rental unit particularly that a number of combustibles were piled throughout the rental unit and that the Tenant had used dog pee pads scattered throughout the unit.
14. A video taken by the Landlords on November 8, 2022 show the hallway to be extremely cluttered with cases of pop, food, clothing, boxes and other items stacked up against the walls and on with floor with a small pathway to gain access to other areas of the rental unit. Looking past the hallway into the living room, the living room has large piles of clothing, boxes, bags and other items stacked haphazardly and piled throughout the room.
15. The videos also depict cockroaches running on top of boxes and items which were situated adjacent to the front door. Upon attempting to enter the rental unit, an individual can be seen having to navigate his steps around items including boxes, dog food bags, dog treats, pop cases, bottles, clothing and cans.
16. The Landlord's Legal Representative referred me to a number of cases to consider to which I did review.
17. The Landlord's Legal Representative submitted that the Landlord is seeking termination of the tenancy as the condition of the rental unit is ongoing and requests eviction be granted for mid to end January, 2023.

Landlord's Agent Marilyn Peacock Ellsworth:

18. The Landlord's Agent Marilyn Peacock Ellsworth ('MPE') testified that the odour from the Tenant's rental unit is so foul that she gags and fruit flies travel into her office. She also stated that guests coming into the building lobby have questioned where the smell is coming from. MPE testified that she observed dog feces on the floor by the front door of the rental unit and that there is staining on the carpet which would require them to be ripped out and replaced. The Tenant contends that as the carpets are 10 years old, they have outlived their lifespan and would need to be replaced regardless.
19. As of the date of the hearing, MPE stated that the odour has eased somewhat but she has also installed air fresheners in the hallway and lobby areas to try to dissipate the odour. Due to the foul odour, MPE states that people have looked at available apartments, saw cockroaches and quickly leave even though the available apartments are brand new. MPE testified that she has received a number of complaints regarding the Tenant's rental unit

and that she contacted St. Matthews House in an attempt to provide assistance to the Tenant.

20. MPE adopted the evidence that the Landlord's Legal Representative provided at the hearing as well.

Witness Kathryn Crooks:

21. Witness Kathryn Crooks ('KC') testified that she lives in unit 108, beside the Tenant and continues to be subjected to a foul smell that comes from the Tenant's unit. KC described the smell as a blend of urine, feces and rotting garbage. KC testified that the smell has severely impacted her and her family as the smell is in their living room, it's in the hallway. She has attempted to mitigate by using diffusers and air fresheners to no avail. KC's guests have also commented "about someone dying next door". KC stated that this is a serious, ongoing concern for her and that on more than one occasion has had to vomit due to the smell. KC testified that she routinely holds her breath when she leaves her unit until she can get to the outside door.
22. KC also testified that she has seen cockroaches of various sizes walking out from under the Tenant's rental unit door.

Tenant's Position:

23. The Tenant testified that if she is evicted, she would like 5-6 months to find other accommodations as she has only looked at resolving the issues recently. The Tenant submits that these issues go back before COVID and that it caused her to stack up things in her rental unit. The Tenant stated that due to a repair that was to have been made in her rental unit, she was told to stack items up and that as the repair was delayed, she had to leave the items piled up and it just grew in size. The Tenant submits that the garbage is due to her own neglect but pleads that she can get the "apartment up to par" so she should be allowed to stay.
24. The Tenant testified that she is 75 years old, has nowhere to go and she cannot afford anywhere else to move to. Upon asking about family members or friends in the area, the Tenant stated that she does have a daughter in Kitchener-Waterloo but the relationship is estranged so she cannot temporarily seek accommodations with her until she found something more permanent. When asked if there were any social agencies that could assist her, the Tenant stated that she had contacted St. Matthews House and they had sent someone but after that person attended at the rental unit for 2.5 hours, she did not return.
25. During the hearing, the Tenant did turn on her camera and showed the current condition of the rental unit. Indeed, she has now cleared out the hallway area, emptied out the hall closet and has a clear path to get to other rooms. It appears the Tenant is addressing the other rooms slowly and the Tenant identified her plan to tackle the remaining rooms to put them back into a state of cleanliness and to de-clutter the rental unit in the next coming days.
26. The Tenant acknowledged that she does not smell any odour and she had, until recently, been unable to open any windows to air out the rental unit.

27. The Tenant testified that the rental unit got to this condition due to her having long COVID and that she suffered from depression. The Tenant stated that she mentioned, very briefly, to her doctor and a counsellor that her “apartment is a mess”. The Tenant stated numerous times throughout the hearing that she is embarrassed and that in the 20 years she has resided in the rental unit, this has never happened before and had no intention of it getting to this point. The Tenant wants to stay in the rental unit, wants an opportunity to clean it up and has been paying her rent on time.
28. In cross examination, the Tenant acknowledged that she has not thrown out garbage as she was just too exhausted and just too ill.

Analysis – relief from eviction:

29. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
30. I agree that the presence of excessive property (clutter), including books, boxes, food items, clothing and so forth has the potential to create an increased fire risk as alleged by the Landlord. However, the Tenant has demonstrated some improvement in the unit with clear paths in the kitchen and in the hallway of the rental unit. However, it does still appear from the live video tour of the rental unit taken by the Tenant during the hearing that routes of egress to and from the rooms in the rental unit remain somewhat blocked and there still is excessive clutter in the remaining rooms.
31. After considering all of the disclosed circumstances in accordance with subsection 83(2) of the *Act*, I 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 Landlord’s Legal Representative stated that the Tenant has not advised the Landlord of any special needs the Tenant may have, nor has the Tenant asked for any accommodations other than her recent request to clean up her rental unit. The Landlord’s Agent did testify that she has attempted to offer assistance to the Tenant. I have considered the Tenant’s testimony that she had been suffering from longstanding effects from COVID and has been depressed as well as the evidence from the Landlord’s witnesses but that the Tenant appears to be making some headway in cleaning and in de-cluttering the rental unit and as such shall be afforded an opportunity to bring the rental unit back into a state of cleanliness.
32. Termination of a tenancy is a remedy of last resort. Where the Landlord’s interests can be protected and a tenancy preserved, the Board will customarily grant conditional relief from eviction if in all the circumstances it would not be unfair to do so. I find that the Landlord’s interests can be protected by bringing the unit into a state of ordinary cleanliness and free of excessive clutter, in a reasonable amount of time and the Tenant will have sufficient time to do so.
33. Furthermore, there is a long standing tenancy of approximately 20 years and there was no evidence before me to suggest the cleanliness of the Tenant’s rental unit was an issue prior to the inspection that took place in March, 2022. At the hearing, the Tenant emotionally acknowledged that she needed to clean the unit, was embarrassed by the

condition of the rental unit and asked for additional time to clean and de-clutter the rental unit. This suggests to me that the Tenant understands that the condition of the rental unit is unacceptable, it is affecting other individuals residing in the residential complex and that the Tenant must address the condition of the rental unit.

34. I am satisfied that it would not be unfair to deny the Landlord's application for eviction on the condition that the Tenant remove all garbage and recycling from her rental unit, clean the rental unit, and maintain the rental unit in a state of ordinary cleanliness for one year such that no new complaints of odours from the rental unit are received by the Landlord and so that the Landlord can have the rental unit properly treated to eradicate any pests, including cockroaches, that may be in the rental unit.

35. This order contains all of the reasons for this matter and no other reasons will be issued.

It is ordered that:

1. The Landlord's application for eviction of the Tenant is denied as long as the Tenant meets the conditions set out below:

(a) On or before January 15, 2023, the Tenant shall clean up her rental unit, which shall include, but is not limited to:

- Removing and properly disposing of all garbage and recycling in the rental unit;
- washing all surfaces including floors, walls, carpets and countertops,
- cleaning all kitchen and bathroom fixtures;
- sealing and properly storing all food items including pet food; and
- addressing the odour issues in her rental unit by ensuring all items that are stored in the rental unit are properly cleaned.

(b) the Tenant shall ensure the rental unit is kept in a state of ordinary cleanliness for a period of one year from the date of this order. This includes, but is not limited to:

- ensuring garbage and recycling does not accumulate in the rental unit;
- maintaining the cleanliness of surfaces including floors, walls and countertops;
- maintaining the cleanliness of the kitchen and bathroom fixtures;
- ensuring perishable items including food and pet food are properly stored; and
- maintaining cleanliness such that there are no new complaints about odour issues in the rental unit for a period of one year from the date of this order.

(c) The Tenant shall allow the Landlord to inspect the rental unit and take photographs/video of the rental unit once every three months to ensure her

compliance with the above conditions. The Landlord shall provide the Tenant with a written notice of entry at least 24 hours in advance of any such inspection.

(d) The Tenant shall permit the Landlord and/or its agents to treat the rental unit for pests. If the purpose for entry by the Landlord is for pest control treatment, the Landlord shall give five business days notice in advance to the Tenant and the Tenant shall prepare the rental unit in advance of any pest control treatment in accordance with written instructions if accompanied with the notice of entry.

2. If the Tenant fails to meet any of the conditions set out in paragraph 1 above, the Landlord may apply to the Board under section 78 of the *Act*, within 30 days of the breach without notice to the Tenant, for an order to terminate the tenancy and evict the Tenant.
3. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
4. If the Tenant does not pay the Landlord the full amount owing on or before January 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 1, 2023 at 4.00% annually on the balance outstanding.

December 8, 2022

Date Issued

Heather Chapple

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.