



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

Citation: Birch v Wade, 2022 ONLTB 13911

Date: 2022-12-07

File Number: LTB-L-033847-22

In the matter of: UNIT A, 236 BAYFIELD ST
BARRIE ON L4M3B7

Between: Martin Birch Landlord

And

Brian Wade Tenant

Martin Birch (the 'Landlord') applied for an order to terminate the tenancy and evict Brian Wade (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.

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

The Landlord also applied for an order requiring 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.

This application was heard by videoconference on November 30, 2022.

The Landlord, and the Landlord's Legal Representative, Joan Backhurst, attended the hearing.

As of 9:50 a.m., 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, the tenancy is terminated on December 12, 2022.
2. The Tenant was in possession of the rental unit on the date the application was filed.

3. The Landlord's application is preceded by an N6 notice of termination ('N6 Notice') deemed served on June 15, 2022 in accordance with the *Residential Tenancies Act, 2006* (the 'Act'). The termination date on the N6 Notice is July 6, 2022.
4. The N6 Notice contains the allegations that on September 14, 2021 and March 8, 2022, the Tenant committed the illegal acts of theft and possession of stolen property.
5. The Landlord testified that on September 14, 2021, he was notified by his property manager that the police had attended at the rental unit and arrested the Tenant for theft.
6. The Landlord testified that on March 8, 2022, he was notified again by his property manager that the police had attended at the rental unit and arrested the Tenant for possession of stolen property found in the unit.
7. The Landlord testified that the Tenant's criminal activity has been ongoing since his arrest and the most recent arrest on September 1, 2022 resulted in the Tenant being charged with drug offences.
8. The Landlord testified the residential complex is a duplex. He testified he has been unable to rent the upper unit due to the Tenant's behaviour. He testified the police have removed six stolen vehicles from the residential complex and the Tenant has been investigated for assault and weapons related incidents.
9. The Landlord's Legal Representative submitted a letter written by the Barrie Police Service, which included a list of incidents reported at the rental unit, as evidence. This list includes the dates of September 14, 2021, March 8, 2022, and September 1, 2022 and shows the Tenant was charged with criminal offences.
10. The Landlord testified that due to several unauthorized persons entering the rental unit, the locks were changed to preserve the rental unit and the Tenant's belongings. He testified he directed his property manager to provide the Tenant with keys to the rental unit should he contact them. He further testified the Tenant has made no contact with the property manager nor has he attempted to retrieve his belongings.
11. Based on the evidence presented by the Landlord, the Landlord's Legal Representative requested that the Board order termination of the tenancy and evict the Tenant.
12. This was also based on the Landlord confirming the Tenant committed illegal acts, specifically above-described theft, possession of stolen property, and drug charges, and these acts occurred at the residential complex in accordance with section 61(1) of the Act, which states:

A landlord may give a tenant notice of termination of the tenancy if the tenant or another occupant of the rental unit commits an illegal act or carries on an illegal trade, business or occupation or permits a person to do so in the rental unit or the residential complex.

13. In terms of considering if this is an “illegal act” and N6 Notices, the Board often turns to its Interpretation Guideline 9: Evict for an Illegal Act or Business.
14. Under the heading “Illegal Act or Business, it states:

“The term “illegal” is not defined in the RTA but would include a serious violation of a federal, provincial or municipal law. If the illegality is trivial or technical, the act or business or occupation might not be considered serious enough to warrant eviction.

An illegal act will be serious if it has the potential to affect the character of the premises or to disturb the reasonable enjoyment of the landlord or other tenants. The seriousness of this ground can be seen in the fact that there is no opportunity in section 61 for the tenant to avoid termination by rectifying the illegal act.”
15. After considering the uncontested testimony of the Landlord and the evidence submitted by the Landlord’s Legal Representative, on the balance of probabilities, I am persuaded the Tenant has committed illegal acts.
16. In this case, the Landlord’s Legal Representative and the Landlord were able to present a direct account supported by compelling evidence that the Tenant committed illegal acts.
17. It is clear that theft, possession of stolen property, and drug related charges fit the definition described above of illegal acts; it has the potential to affect the character and disturb the reasonable enjoyment of the residential complex by the Landlord. The crimes in question therefore are serious and does impact the Landlord and the risks harmful effects to it.
18. Therefore, the Landlord’s request to end the Tenant’s tenancy and evict the Tenant is granted.
19. The Landlord claimed compensation for damages wilfully or negligently caused by the Tenant. The Landlord testified that he was unable to provide any documentary evidence to support this claim.
20. As there is no evidence before me to support the claim for compensation, this part of the application must be denied.
21. This order contains all the reasons for the decision. No other reasons will be issued.

Daily Compensation

22. The Tenant was required to pay the Landlord \$3,082.19 in daily compensation for use and occupation of the rental unit for the period from July 6, 2022 to November 30, 2022.
23. Based on the Monthly rent, the daily compensation is \$41.10. This amount is calculated as follows: \$1,250.00 x 12, divided by 365 days.
24. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

25. There is no last month's rent deposit.

Section 83 considerations

26. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
27. The Landlord's Legal Representative submitted the Landlord is seeking termination of the tenancy due to the Tenant's criminal activity and it is due to this behaviour, the Landlord has been unable to provide housing to another person. The Landlord is seeking an 11-day expedited eviction order.
28. When considering relief from eviction it is incumbent on the Board to consider all the circumstances. In this case the Tenant was not present to give me any of his circumstances to consider, therefore I am only able to consider what was presented to me at hearing all of which points to the Tenant's ongoing behaviour of committing illegal acts. I find it would be far more prejudicial to the Landlord to allow the Tenant any extra time in the unit due to his criminal behaviour.

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 12, 2022.
2. If the unit is not vacated on or before December 12, 2022, then starting December 13, 2022, 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 December 13, 2022. **The Sheriff is requested to expedite the enforcement of this order.**
4. The Tenant shall pay to the Landlord \$3,082.19, which represents compensation for the use of the unit from July 6, 2022 to November 30, 2022. The Landlord must deduct from this amount any monies paid by the Tenant for rent.
5. The Tenant shall also pay the Landlord compensation of \$41.10 per day for the use of the unit starting December 1, 2022 until the date the Tenant moves out of the unit.
6. The Tenant shall also 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 12, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 13, 2022 at 4.00% annually on the balance outstanding.

December 7, 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.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on June 13, 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.

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