



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

Citation: Toronto Community Housing Corporation v Asnske, 2022 ONLTB 13834

Date: 2022-12-05

File Number: LTB-L-010771-22

In the matter of: 308, 6 HENRY ST
TORONTO ON M5T1X1

Between: Toronto Community Housing Corporation Landlord

And

Tewodros Asnske Tenant

Toronto Community Housing Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Tewodros Asnske (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 claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on November 3, 2022.

Determinations:

The Tenant's Absence from the Hearing

1. The Landlord and their instructing client attended the hearing. The Tenant's case manager Sarah Moore was present to support the Tenant. The Tenant did not attend the hearing.
2. The Tenant's case manager informed me that the Tenant came to her office on the morning of the hearing so that she could help him call into the hearing. However, once there the Tenant became aggressive, so his case manager asked him to leave for her own safety. The case worker informed me that she was not sure if the Tenant has access to a telephone or the internet. She suspects that he does not.
3. I addressed this matter at 2:19p.m. and as such the Tenant had a significant amount of time to find an alternative arrangement to call into the hearing. The hearing started at 9a.m. It was the Tenant's own actions that resulted in him losing the support of his case manager to participate in the hearing. His case manager had arranged a space and device for the Tenant to be able to participate in the hearing.

The Application

4. 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 as of January 3, 2023 and daily compensation will be awarded from November 4, 2022 until the day the Tenant moves out of the rental unit.
5. The Tenant was in possession of the rental unit on the date the application was filed.
6. On January 11, 2022, the Landlord gave the Tenant an N5 notice of termination which was deemed served on January 16, 2022. The notice of termination alleges that that the Tenant's unit is so cluttered and unclean that it is substantially interfering with the reasonable employment of the residential complex of other tenants and with the Landlord's lawful rights, privileges, or interests. The N5 notice mentions the following particulars:
 - A March 23, 2021 inspection of the unit revealed that the clutter in the living room and bedroom was beyond a level 6 on the clutter scale. The unit was also infested with cockroaches. Treatment of the cockroaches is impeded by the clutter in the unit.
 - September 3, 2021 Special Constable Paramar attended the residential unit to conduct a welfare check. At that time the unit was determined to be in a very poor condition and was full of clutter, garbage, cockroaches, and bed bugs.
 - On September 28, 2021 the Tenant was informed by a letter that the recent inspection revealed that there were items in his unit blocking pathways and exits such that it created a fire hazard. Items were also found located in close vicinity to the electric stove causing a fire hazard. The Tenant was also informed that he needed to remedy the clutter and garbage in the unit so that treatment for bedbugs and cockroaches could be effective.
 - On October 23, 2021 a follow up inspection was conducted that revealed there had been no improvement in the condition of the residential unit.
7. The Tenant did not clean up his unit within seven days after receiving the N5 notice of termination. Photographic evidence introduced by the Landlord shows that the condition of the unit continues to worsen. Therefore, the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (the 'Act').

Incidents from the N5 Notice

8. Asfar Manji ('A.M'), who is a Community Service Coordinator with Toronto Community Housing testified that the clutter and cleanliness in the Tenant's unit has been an ongoing problem for two years. A.M testified that she did a unit visit on March 23, 2021. This is the first event listed on the N5 notice. A.M testified that on that day there was a concerning level of clutter in the rental unit. In their notes A.M describes the clutter level as 4 in the living room and 6 in the bedroom.

9. A.M also testified that there have been reports of cockroaches crawling in the halls outside of the Tenant's unit.
10. Constable Parma ('C.P') is a Special Constable with Toronto Community Housing. She testified that she did a welfare check on the Tenant's apartment on September 3, 2021. This is the second event listed on the N5 notice. C.P testified that the unit condition was very poor on that date and there was clutter, garbage, cockroaches, and bed bugs found within the unit.
11. Tanishia Allen ('T.A') is the charge of tenancy management for Toronto Community Housing. She testified that on September 28, 2021 a letter was sent to the Tenant asking him to prepare for pest control treatment as his unit was still in poor condition. That letter was introduced into evidence. She testified that the pest control company would not treat the unit because of the poor condition it was in. T.A testified that the neighbouring tenants around the Tenant's unit have cockroaches and bed bugs. She also testified that there have been complaints about the smell coming from the Tenant's unit.
12. An internal report was also introduced into evidence that showed there was a follow-up inspection of the Tenant's unit on October 23, 2021 that showed no improvement in the state of the rental unit. It also indicates that there are poor housekeeping issues and clutter issues.

Ongoing Issue

13. Ronelle Tabafunda ('R.T') is the senior superintendent of the building where the Tenant resides. She deals with complaints and tenants who have mental health issues. R.T entered the Tenant's unit on January 17, 2022 to install a new smoke detector and found the unit to still be in very poor condition. Photos from that entry were introduced into evidence. The photos show clutter and garbage all over the living room.
14. R.T testified that she also entered the Tenants unit on February 15, 2022 because of a flood. The photos of the unit that she took on that occasion were also entered into evidence. In the photos the rental unit is still in an extremely unsanitary condition with garbage covering most of the floor.
15. A report from Safe Guard, which is a company that does pest control, was entered into evidence. In this report it says that a worker was tasked with entering the unit on February 24, 2022 to do pest control but was unable to do so because of the severe clutter and sanitation issues in the unit. This report also has photos attached which show the continued clutter and garbage all over the Tenant's unit.
16. R.T was also in the Tenant's unit the week prior to the hearing because there was another flood in the unit. She testified that the unit condition remained poor and that there were sanitation and housekeeping issues. Photos from that visit were also entered into evidence. Those photos also show clutter and garbage all over the rental unit.
17. Based upon this evidence I am satisfied on a balance of probabilities that at no time since the N5 was served has the Tenant remedied the problem.

Supports Offered to the Tenants

18. A.M testified that the Tenant has been put in contact with COTA mental health agency on a number of occasions to get supports. A.M also testified that they reached out to the Tenant on 12 occasions to discuss the ongoing issues and was successfully able to speak to the Tenant on 4 occasions. On those occasions the Tenant was offered support in cleaning up his unit in the form of extreme clean service and hoarding support. A.M testified that the Tenant was uninterested and disengaged with the supports offered. A.M also testified that they are not aware of any personal circumstances that would prevent the Tenant from cleaning their unit.

Substantial Interference

19. Based upon the Landlord's uncontested evidence I am satisfied that the neighbours of the Tenant also have a pest infestation, the treatment of which is being hindered by the Tenant's failure to clean up their unit. As such, I find on a balance of probabilities that the Tenant's behaviour is substantially interfering with his neighbouring tenants.
20. Also based upon the Landlord's uncontested evidence I find that the Tenant's conduct in maintaining the unit in a state of extreme clutter and unsanitary conditions, substantially interferes with the Landlord's lawful right, privilege or interest as the Landlord has the right and obligation to maintain the health and safety and fire safety standards within the residential complex.

Daily Compensation and the Rent Deposit

21. At the hearing the Landlord's Representative indicated that she did not believe the Tenant is in any arrears. I will award daily compensation per day for compensation for the use of the unit starting November 4, 2022 until the Tenant moves out.
22. Based on the Monthly rent, the daily compensation is \$34.78. This amount is calculated as follows: \$1,058.00 x 12, divided by 365 days.
23. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
24. The Landlord collected a rent deposit from the Tenant in January 2019 in the amount of \$953.00. Interest on the rent deposit, in the amount of \$9.62 is owing to the Tenant for the period from January 1, 2021 to November 3, 2022.

Relief from Eviction

25. 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. The Landlord offered supports to the Tenant in the hopes of preserving the Tenancy. Based upon the evidence before me it does not appear that the Tenant has taken advantage of those supports. I do not think it would be fair in the circumstances to either the Landlord or the neighbours of the tenant, to grant relief from eviction in the form of a conditional order to clean up the rental unit. I have no confidence

that the Tenant would abide by such an order. Additionally, the Tenant did not attend the hearing to provide any evidence relevant to my analysis under section 83 of the Act.

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 January 3, 2023.
2. If the unit is not vacated on or before January 3, 2023, then starting January 4, 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 January 4, 2023.
4. The Tenant shall pay the Landlord \$186.00 for the cost of filing this application.
5. The Tenant shall also pay the Landlord compensation of \$34.78 per day for the use of the unit starting November 4, 2022 until the date the Tenant moves out of the unit.
6. The Landlord owes \$962.62 to the Tenant which is the amount of the rent deposit and interest on the rent deposit.
7. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

December 5, 2022

Date Issued

Amanda Kovats

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 July 4, 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.