



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

Citation: 1887455 Ontario Inc. v Pilon, 2022 ONLTB 13795

Date: 2022-12-05

File Number: LTB-L-009292-22

In the matter of: Upper, 1463 FAIRBURN ST
SUDBURY ON P3A1N6

Between: 1887455 Ontario Inc. Landlord

And

Kyle Pilon Tenant

2022 ONLTB 13795 (CanLII)

1887455 Ontario Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Kyle Pilon (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 undue damage to the premises.

This application was heard by videoconference on November 2, 2022.

The Landlord attended the hearing, was self-represented, and called Donald Gervais ('D.G.') as a witness.

As of 2:27 p.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. The Landlord alleges that the Tenant disturbs the residential complex by making excessive noise and creating odours and leaks which permeate throughout the residential complex.
2. The Tenant continues to reside in the rental unit. The only remedy being sought is an order for eviction.
3. For reasons that follow, the application is granted.

THE L2 APPLICATION

4. The L2 application is based on an N5 notice of termination. For reasons that follow, the N5 portion of the application is granted.

The N5 Notices – (i) substantial interference; and (ii) wilfully or negligently caused undue damage

5. The Landlord served an N5 notice of termination (the 'N5') under 62(2) and 64(2) of the Act. The N5 alleges that the Tenant or their occupant or guest wilfully or negligently caused undue damage to the rental unit, and also that the Tenant has substantially interfered with the reasonable enjoyment by the Landlord or other tenants. The Landlord served the N5 on January 25, 2022 by handing the document to the Tenant. It had a termination date of February 16, 2022. This N5 indicated that this was the first notice given to the Tenant with a 7-day correction period.
6. Subsections 62(2) and 64(2) of the Act provides that a notice of termination under these provisions must: (i) provide a notice of termination not earlier than the 20th day after the notice is given; (ii) set out the grounds for termination; and, (iii) require the tenant within seven days to stop the conduct or activity or correct the omission set out in the notice. In the event a tenant voids the first N5 notice, subsections 68(1) and (2) permits a landlord to deliver to a tenant a second N5 notice with a termination date that shall not be earlier than the 14th day after the notice was given.
7. I am satisfied that the N5 notice issued to the Tenant was procedurally valid and complied with sections 64 and 68 of the Act. I am also satisfied that the Tenant did not void the N5 notice within the 7-day voiding period.

Substantial interference; wilfully or negligently caused undue damage

8. For the reasons that follow I am satisfied on a balance of probabilities that the Tenant substantially interfered with the reasonable enjoyment of another tenant in the residential complex as well as the Landlord. I am also satisfied that the Tenant wilfully or negligently caused undue damage to the rental unit or residential complex.

Landlord's evidence

9. The Landlord testified that the application is based on incidents that took place on and around January 1, 2022, January 13, 2022 and January 14, 2022.
10. On or around January 1, 2022, the Landlord discovered that water was leaking from the Tenant's unit into a neighbouring tenant's unit (located on the main floor of the residential complex below that of the Tenants) which, he learned later, was because the Tenant leaves the water running for his cats to play in, and also collects on the floor when he takes baths and showers. This pattern of water leaking persisted up to the date of the hearing and had led to mold development and water damage in the neighbouring unit.
11. In response to complaints from the adjacent tenant, and an order of non-conformity received from the municipality, the Landlord attempted to enter the unit to repair the

damage whose access was blocked by the Tenant. Elaborating further, the Landlord explained that he made several attempts, with notice, to access the unit, which was denied by the Tenant. He was successful on one occasion entering the unit to perform an inspection for the purpose of assessing the repairs and maintenance requirements he was ordered to complete by the municipality. Entered into evidence was a video taken by the Landlord during this inspection which revealed a number of animals (specifically, cats) within the unit, physical damage to the walls and structures of the unit in the form of damaged drywall and ceilings, and a significant collection of animal related debris (i.e., multiple cat litter boxes, and pet structures). Also entered into evidence by the Landlord were photographs taken during this inspection showing damage to the walls in the form of damaged drywall and mold on both the walls and floors of the unit. The Landlord has not been permitted to enter the unit since this inspection to perform the repairs.

12. The Landlord also testified to a profound smell of cat urine which permeates throughout the residential complex, into his neighboring used car rental and rust repair businesses, and that of a neighboring tenant's unit, all of which comes from the Tenant's unit.
13. Finally, the Landlord testified to complaints of noise emanating from the units in the form of dogs barking, yelling and screaming on an intermittent basis which, in addition to the smell of cat urine, is disruptive to the neighbouring tenant, his customers, employees and staff of his neighbouring business, as well as himself.
14. On January 13, 2022 and January 14, 2022, and in response to a complaint made by one of his other tenant's, the local municipality entered the premises to conduct an inspection and levied against him an order to comply with municipal maintenance standards. Repairs were performed within the neighboring tenant's unit, however, as of the date of the hearing, the Tenant has not permitted the Landlord to enter into the subject unit to perform the repairs.
15. Entered into evidence was a copy of a complaint made to the Public Health Sudbury & Districts by a tenant obtained through an Access to Information Request made on October 24, 2022. Also entered into evidence by the Landlord was an 'Order to Remedy Non-Conformity with Standards for Maintenance and Occupancy of all Property' issued by the Greater Grand Sudbury municipality dated January 26, 2022.
16. Elaborating upon the impact of the Tenant's alleged conduct, the Landlord testified that this has led to another tenant filing a claim against him with the Board in the form of a T6 application. Furthermore, the steady stream of water leaking from the tenant's unit has led to an increase in his utilities expenses. Submitted into evidence was a copy of the T6 application filed by the tenant named Donald Gervais (absent the file number), and copies of waste water and electricity bills from 2019 through to 2020 contrasting the increase in these expenses since the Tenant moved into the unit in September 2020.

Evidence of D.G.

17. D.G. testified that he is the neighboring tenant who had filed a complaint with the municipality pertaining to the Tenant's conduct. He also filed a T6 application with the Board against the Landlord pertaining to the same issues. He explained that throughout his tenancy (and through to the date of the hearing), he has been exposed to constant noise coming from the Tenant's unit, suffered water damage from moldy water leaking into

his unit, and the rest of the complex has been exposed to offensive urine odors that permeates throughout his unit and residential complex.

18. Elaborating further, D.G. explained that the Tenant will let the water in his unit run for prolonged periods of time which then leaks into his unit.. The water that flows into the unit is moldy, which has resulted in mold damage within his unit which, he confirmed, the Landlord repaired approximately six months earlier.
19. D.G. testified to significant noise that comes from the Tenant's unit that is disruptive to him. These noises are in the form of doors slamming, furniture moving on regular basis, yelling and screaming. On one occasion he heard the sound of a dog crying.
20. The tenant testified that there is a constant, pervasive cat urine smell that comes from the Tenant's unit that travels into his apartment and throughout the entire residential complex. It is his understanding that the Tenant has 6 cats and one dog living in the unit. The smell enters his unit and is disruptive to his sleep and quality of life.
21. Finally, D.G. testified that due to these issues he felt compelled to file a T6 application with the Board on January 24, 2022. The witness did not have available to him the file number attached to the T6 application he had filed.

Analysis

22. Section 64 of the Act provides that a landlord may give a tenant a notice of termination of the tenancy if the tenant's behaviour substantially interferes with the reasonable enjoyment of the residential complex by the landlord or other tenants.
23. Based on the uncontested evidence at the hearing, I am satisfied that the Landlord has proven a breach of section 64 of the Act. I find that the Tenant substantially interfered with the reasonable enjoyment of the residential complex by another tenant and that of the Landlord by continuously causing moldy water leaks into the neighbouring tenant's unit, creating noise in the form of yelling, banging, screaming, and moving furniture, and, creating cat urine odours which permeates through the entire residential complex that not only adversely impacts the neighbouring tenant, but the Landlord's business, staff and customers. I am satisfied that this conduct occurred on and around January 1, 2022, January 13, 2022 and January 14, 2022.
24. I am further satisfied that that the Tenant's conduct resulted in a municipal compliance order being levied against the Landlord.
25. Section 62 of the Act provides that a landlord may give a tenant a notice of termination of the tenancy if the tenant willfully or negligently causes undue damage to the rental unit of the residential complex.
26. I am also satisfied, based on the uncontested evidence presented at the hearing, that the Landlord has proven a breach of section 62 of the Act. The evidence established that the Tenant's unit has significant mold and water damage to the interior walls and flooring by allowing water to run for prolonged periods of time. I am satisfied that the damage is undue, and that it was caused either wilfully or negligently by the Tenant. I reach this conclusion based on the nature of the damage, and also that it was located within the

Tenant's unit. In the absence of a reasonable explanation, I am prepared to draw an inference that the damage was caused by the Tenant or someone he permitted into the unit. For the same reasons I am satisfied that the Tenant has also caused undue damage to D.G.'s unit by continually leaking water causing water and mold damage.

Relief from eviction

27. 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. I am satisfied that denying the eviction would be unfair to the Landlord as it is clear that the tenancy relationship has deteriorated resulting in a significant and adverse impact on both the Landlord and D.G., the latter of whom resides in the residential complex.
28. D.G. testified to the disruption the noise, leaking of moldy water into his unit, and exposure to cat odours had on him and the interference this had on his enjoyment of his apartment. The smell enters his unit and is disruptive to his sleep and quality of life. Elaborating further he explained that he suffers from chronic obstructive pulmonary disease ('COPD') and sleep apnea, and depends on the use of a CPAP machine in order for him to sleep properly. The smell has tainted his masks forcing him to replace them on multiple occasions at a cost of \$300.00 each. These issues persisted up to the date of the hearing.
29. D.G. elaborated further on the leaking water issue and, citing as an example, on September 15, 2022, the Tenant ran water all night from approximately midnight until 6:00 a.m. which then leaked into his unit.
30. The Landlord reiterated that the noise, smell, and damage to the unit has had an adverse impact on his other tenant, his employees, staff, and customers of the business he operates is adjoined to the residential complex. In addition to the financial impact of having to repair the damages caused, the steady leaking of water from the unit has increased his hydro and water bills related to the unit.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of December 17, 2022. The Tenant must move out of the rental unit on or before December 17, 2022.
2. The Tenant shall pay to the Landlord \$190.00 for the cost of filing the application.
3. If the Tenant does not pay the Landlord the full amount owing on or before December 17, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 18, 2022 at 4.00% annually on the balance outstanding.
4. If the unit is not vacated on or before December 17, 2022, then starting December 18, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

5. 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 18, 2022.

December 5, 2022

Date Issued

Emile Ramlochan

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 14, 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.