



Order under Section 69 Residential Tenancies Act, 2006

Citation: Perry v Lacombe, 2022 ONLTB 12845

Date: 2022-11-30

File Number: LTB-L-036115-22

In the matter of: 36 DERBY STREET EAST
ALEXANDRIA ON K0C1A0

Between: Wendy (Wenfei) Perry Landlord

And

Raymond Lacombe Tenant

Wendy (Wenfei) Perry (the 'Landlord') applied for an order to terminate the tenancy and evict Raymond Lacombe (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes. **(L1 Application)**

The Landlord also applied for an order to terminate the tenancy and evict 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; and
- 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; and
- 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; and
- 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; and
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex used the rental unit or the residential complex in a manner that is inconsistent with use as a residential premises and that has caused or can be expected to cause significant damage. **(L2 Application)**

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

Only Landlord attended the hearing.

As of 9:30 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. Therefore, the tenancy is terminated on December 11, 2022.

L1 Application

2. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent ('N4 Notice'). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
3. As of the hearing date, the Tenant was still in possession of the rental unit.
4. The lawful rent is \$647.00. It is due on the 1st day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$21.27. This amount is calculated as follows: \$647.00 x 12, divided by 365 days.
6. The Tenant has paid \$35,917.00 to the Landlord since the application was filed.
7. The rent arrears owing to November 30, 2022 are \$640.00.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. There is no last month's rent deposit.
10. The Landlord testified she spoke to the Tenant on numerous occasions with respect to the arrears owing and suggested he pay an additional \$50.00 per month to satisfy the arrears. She testified the Tenant advised her that he has no money and refuses to pay the amount owing either in full or by way of a payment plan.

L2 Application

11. The Landlord's application was also preceded by an N5 notice of termination and an N7 notice of termination ('N5 and N7 Notices'), both deemed served on May 7, 2022 in accordance with the requirements of the *Residential Tenancies Act, 2006* (the 'Act').
12. The Landlord's N5 and N7 Notices rely on similar schedules in which the Landlord alleges the following:
 - a) November 2019; the Landlord learned the Tenant was operating an illegal tattoo business in the rental unit; and

- b) March 23, 2022: the Landlord attended at the rental unit to repair an unreported water leak in bathroom. The Tenant and the guest caused the Landlord to fear for her safety as the Tenant's guest was in the unit against a trespass a notice served by the Landlord due to previous safety concerns; and
 - c) April 25, 2022: the Tenant caused a fire in the rental unit by leaving a pot unattended on the stove; and
 - d) April 25, 2022: the Tenant removed the smoke detector from the rental unit; and
 - e) April 25, 2022: the Tenant caused damage to the stove and microwave oven and these appliances were removed from the rental unit as they were deemed a fire hazard.
13. As both the N5 and N7 Notices rely on essentially the same alleged facts, they will be considered together.
 14. The Landlord testified that she received an unexpected higher than normal water and sewer bill from the Township of North Glengarry January 2022 and March 2022. She testified the amount of water consumption indicated there may be a water leak in one or more of the rental units. She testified that on March 22, 2022, she attended at the rental unit and discovered the shower faucet and toilet were running. She stated that the Tenant had neglected to report the issues to her and it was not until the day of the inspection that she learned there was a problem. She testified that because of the Tenant's negligence she was responsible to pay the township an additional \$600.00.
 15. The Landlord testified that the Tenant was operated an illegal tattoo business in the rental unit however the Landlord was unable to provide any documentary evidence to support this claim. As such, the claim for inconsistent use of the rental unit shall be dismissed.
 16. The Landlord testified that on April 25, 2022, there was a fire in the Tenant's unit. The Fire Department determined the fire was caused by the Tenant cooking in the unit and leaving the stove unattended. She testified the Fire Department advised her the stove was covered in grease thus igniting the fire. She stated the Fire Department removed the stove and the microwave oven from the unit as they were deemed a fire hazard.
 17. The Landlord testified that at the time of the fire, it was discovered by the Fire Department the Tenant had removed the smoke detector from the rental unit contrary to the *Fire Protection and Prevention Act, 1997*.
 18. The Landlord is seeking termination of the tenancy. The Landlord is also seeking compensation for damages in the amount of \$950.00, which represents the increased cost of the water bills and the cost of the stove.

Analysis

19. Section 62(1) of the Act says:

A landlord may give a tenant notice of termination of the tenancy if the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex wilfully or negligently causes undue damage to the rental unit or the residential complex.

20. And section 64(1) of the Act says:

A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.

21. And section 66(1) of the Act says:

A landlord may give a tenant notice of termination of the tenancy if,

(a) An act or omission of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant seriously impairs or has seriously impaired the safety of any person; and

(b) The act or omission occurs in the residential complex.

22. In this case, the allegations of substantial interference with the Landlord's lawful rights, privileges, and interests, negligent or wilful damage, and the serious impairment of safety are with respect to the Tenant's neglect in reporting the water leak to the Landlord, a fire in the rental unit caused by the Tenant's neglect, and the tampering with the smoke detector.
23. Based on the uncontested evidence before me, I am satisfied that the Tenant, occupant, or a guest of the Tenant has substantially interfered with the Landlord's lawful rights by causing the Landlord to incur additional expenses by not reporting the water leak in a timely manner and by the Tenant, occupant, or a guest of the Tenant, causing a fire in the unit by neglecting to attend to the stove while cooking.
24. The case law establishes that to warrant eviction under Section 66, there must be some actual impairment of safety. As held in *SOL-26261-12, 2012 LNONLTB 2628*, it is not necessary that anyone has actually been hurt or injured. It is sufficient that it is foreseeable that the act or omission could have resulted in or may result in a serious impairment of safety. The impairment of safety must be serious. Given the serious consequences of this ground, including short notice, immediate application, no opportunity to correct behaviour, priority eviction by the Sheriff, this ground is intended for the most serious of situations.

25. Based on the uncontested evidence before me, I am also satisfied the Tenant, an occupant, or guest of the Tenant has seriously impaired the safety of another person by tampering with the smoke detector in the rental unit. I find it foreseeable that the act of removing the smoke detector could have resulted in a serious health risk to the Tenant and the other residents of the complex. I therefore find that the Tenant has seriously impaired the safety of another, and these acts occurred in the residential complex.

Section 83 considerations

26. 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.
27. The Landlord is seeking termination of the tenancy due to the Tenant's negligent behaviour and stated the safety of the other residents is paramount. The Landlord is seeking an 11-day 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 being reckless and impairing the safety of others. I find it would be far more prejudicial to the Landlord to allow the Tenant any extra time in the unit due to his negligent and audacious behaviour.

It is ordered that:

L1 Application

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
3.
 - \$826.00 if the payment is made on or before November 30, 2022. See Schedule 1 for the calculation of the amount owing.

OR

 - \$1,466.00 if the payment is made on or before December 11, 2022. See Schedule 1 for the calculation of the amount owing.
4. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after December 11, 2022 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.

5. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before December 11, 2022.**
6. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$251.71. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
7. The Tenant shall also pay the Landlord compensation of \$21.27 per day for the use of the unit starting November 3, 2022 until the date the Tenant moves out of the unit.
8. If the Tenant does not pay the Landlord the full amount owing on or before December 11, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 12, 2022 at 4.00% annually on the balance outstanding.
9. If the unit is not vacated on or before December 11, 2022, then starting December 12, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. 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 12, 2022.

L2 Application

11. Notwithstanding the voiding provisions above, the tenancy between the Landlord and the Tenants is terminated due to the serious impairment of safety of another person, substantial interference with the Landlord's lawful rights, privileges, and interests, and undue damage to the rental unit. The Tenant must move out of the rental unit on or before December 11, 2022.
12. If the unit is not vacated on or before December 11, 2022, then starting December 12, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
13. 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 12, 2022.
14. The Tenant shall pay to the Landlord \$950.00, which represents the costs of the excess water usage and damage to the stove in the rental unit.
15. The Tenant shall also pay the Landlord compensation of \$21.27 per day for the use of the unit starting November 3, 2022 until the date the Tenant moves out of the unit.
16. If the Tenant does not pay the Landlord the full amount owing on or before December 11, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 12, 2022 at 4.00% annually on the balance outstanding.

November 30, 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 expires on June 12, 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.

Schedule 1
SUMMARY OF CALCULATIONS

A. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before November 30, 2022

Rent Owing to November 30, 2022	\$36,557.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$35,917.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Total the Tenant must pay to continue the tenancy	\$826.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before December 11, 2022

Rent Owing to December 31, 2022	\$37,197.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$35,917.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Total the Tenant must pay to continue the tenancy	\$1,466.00

C. Amount the Tenant must pay if the tenancy is terminated

Rent Owing to Hearing Date	\$35,982.71
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$35,917.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Total amount owing to the Landlord	\$251.71
Plus daily compensation owing for each day of occupation starting November 3, 2022	\$21.27 (per day)