



Order under Section 69 Residential Tenancies Act, 2006

Citation: Robert v Marlow (also known as Chad Marleau), 2022 ONLTB 12676

Date: 2022-11-30

File Number: LTB-L-031628-22

In the matter of: Chambre 5, 812 Gloucester Street North
Cornwall ON K6H5X2

Between: Anne Robert, Rock Celian Landlord

And

Chad Marlow (also known as Chad Marleau) Tenant

Anne Robert, Rock Celian (the 'Landlords') applied for an order to terminate the tenancy and evict Chad Marlow (also known as Chad Marleau), (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlords 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.
- 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.
- 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 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 Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully caused undue damage to the premises.

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

The Landlords 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 August 4, 2022.

Only the Landlords, Anne Robert, Rock Celian the Landlord's legal representative Sophie Sauvé attended the hearing.

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.

L1 application

Determinations:

1. 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.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$500.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$16.44. This amount is calculated as follows: \$500.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to August 31, 2022, are \$3,500.00.
7. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlords collected a rent deposit of \$500.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
9. Interest on the rent deposit in the amount of \$7.58 is owing to the Tenant for the period of May 1, 2021 to August 4, 2022.
10. 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.

L2 application**Determinations:**

11. The Landlords L2 application is dismissed for the reasons below.
12. The Landlords served the Tenant with a Notice to End your Tenancy for Interfering with Others, Damage or Overcrowding (N5), Notice to End your Tenancy for Illegal Acts (N6) and Notice to End your Tenancy for Causing Serious Problems in the Rental Unit or Residential complex (N7) on April 24, 2022, with a Termination date of May 16, 2022.
13. Although the Landlords made an application based on three separate notices (N5, N6 N7), the conduct in the notices are exactly the same.
14. The residential complex is operated as a rooming house.
15. In December 2021, the Landlords advised the Tenant and the other Tenants in the residential complex that the Landlords had been served with an Order to Comply from the City of Cornwall which might possibly require vacant possession of the property to perform required repairs and renovations. The Landlords submitted a copy of a letter dated November 9, 2021, from the City of Cornwall. The letter informs the Landlords that they are in violation of the Building Code and are required to obtain a permit to convert or decommission the rooms. The Landlords also submitted which sets out the Order to Remedy By-Law Violation, which shows the complex is in violation of using the property as a rooming house and is required to decommission units in order to comply with the Order.
16. It was the Landlords' uncontested evidence that the following events below occurred after the Landlords notified the Tenants about the need for the renovations.
17. The Landlord R.C. testified that on or about December 21, 2021, the Tenant and the other Tenants were verbally advised that the Tenant and other Tenants may be facing eviction. The tenants uttered a death threat and threatened to burn the property down. The Landlord testified that the Tenant and other tenants told Anne Robert, ('A.R.') the following: "If I am forced to move out, I will burn this place down" and said to A.R. "don't come to the property or I will kill you".
18. The Landlords were very concerned with their safety. The Landlords then notified the police and testified that there is an ongoing investigation.
19. On the balance of probabilities, I am not satisfied that the Tenant specifically made the threats onto the Landlord. The Landlord did not provide any direct evidence to prove that it was Tenant who made the threats. It is not enough for the Landlord to say that the Tenant and "other tenants" threatened the Landlord. The Landlord has not met the burden of proof, as such this part of the Landlord's application is dismissed.

Damage

20. The Landlords' evidence is the Tenant caused significant damage to the rental unit and rental complex in the company of other tenants.
21. On or about February 23, 2023, the Landlords were advised of an issue with the power or lighting at the rental property. The Landlords sent an electrician to attend to the issue.

Following their visit, the Landlords were sent an email reporting that a thick liquid or syrup was poured into the receptacles and lights which caused damage to the circuit. The electrician was not able to address the repairs or damage because of large amount of trash piled up to the knees all over the complex. The unit was in extreme unsanitary condition.

22. R.C. testified that on March 13, 2022, when the Landlords visited the residential complex, they noticed urine and excrements in the shared kitchen and hallway areas which form part of the common areas. A tenant had witnessed one of the tenants defecating and urinating at night and reported it to the Landlords. The Landlords suspect that the Tenant was included in the indecent act. The Landlord R.C. further testified that the Landlords were often called out to have the mess cleaned up since the first occurrence on March 13, 2022.
23. The Landlord R.C. testified that when they purchased the residence in 2021 it was posted as a non-smoking complex and that all the tenants were advised. Despite numerous warnings, the Tenant continued to smoke inside their room and in the residential complex in the shared areas. The Landlords were advised that the Tenant removed multiple no-smoking signs and threw them in the garbage.
24. The Landlords testified that there were a few fires in the complex due to smoking and one in the kitchen caused by the Tenant. The fire department's report indicates that smoke detectors were missing, or wires were cut. Since the Tenant and two other tenants were the ones smoking it was obvious to the Landlord it could only be them who disconnected or cut the wires to the detectors. The Landlords were concerned about the smoking and the fires. One of the Tenants who rented a room in the basement was on oxygen.
25. The Landlord RC testified that on or about March 19, 2022, the Landlords received a text message from one of the tenants that the Tenant along with two other tenants were breaking into the Landlords' storage room and were stealing multiple items. The police were called and when the Landlord and police attended the property, the Landlords valuable belongings had been stolen. A police investigation is underway and possible charges will be laid against the Tenant. The Tenants broke the lock and stole items. The Landlord provided a list of items that were stolen and damaged.
26. The Landlords testified that in May 2022, the Tenant locked his key inside the room. The Landlord lives an hour away and the Tenant did not wait for the Landlord to bring the key broke the window to get into the room.

Analysis

27. The Landlord's application is about damages caused by the Tenants. There are multiple tenants living in the complex. The difficulty with this part is with respect to the burden of proof. On any application before the Board the person who wants to establish any given fact has the burden of proof. The burden of proof is the normal civil standard of balance of probabilities. In other words, the Landlords must establish through evidence that it is more likely than not that the Tenant, an occupant or a guest caused the damage or was smoking in the unit.

28. It is not enough for the evidence to establish that one of the tenants was responsible for the damage. The Landlord must establish on a balance of probabilities that Chad Marlow caused the damage. The fact that there were multiple tenants living in the complex and the Landlord cannot prove which one(s) caused the damage the Landlord cannot meet its burden. As such the Landlord's L2 application must be dismissed.

It is ordered that:

1. The Landlord's L2 application is dismissed.
2. The tenancy between the Landlord and the Tenant is terminated and the Tenant must vacate by January 3rd, 2023.
3. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**

\$5,833.00 if payment is made on or before January 3, 2023. 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 January 3rd, 2023, 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 January 3rd, 2023.**
6. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$3,686.00. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
7. The Tenant shall also pay the Landlord compensation of \$16.44 per day for the use of the unit starting August 5th, 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 January 3rd, 2022, the Tenant will start to owe simple interest at 4.00% annually on the balance outstanding.
9. As of August 4, 2022, (the date of the hearing) the amount of deposit and interest the Landlord owes on the deposit is \$507.78.
10. The Landlord and or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
11. If the unit is not vacated on or before January 3rd, 2023, then starting January 4th, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

12. 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 4th, 2023.

December 13, 2022

Date Issued

Nicole Huneault

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.

*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

**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 December 31st, 2022.

Rent Owing To December 31 st , 2022	\$5,500.00
Application Filing Fee	\$ 186.00
Total the Tenant must pay to continue the tenancy	\$ 5,686.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before January 3, 2023

Rent Owing To January 3, 2023.	\$5,549.32
Application Filing Fee	\$ 186.00
Total the Tenant must pay to continue the tenancy	\$5,735.32

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

Rent Owing To Hearing Date	\$ 3,500.00
Application Filing Fee	\$ 186.00
Less the amount of the last month's rent deposit	- \$500.00
Less the amount of the interest on the last month's rent deposit	- \$7.58
Total amount owing to the Landlord	\$3,178.42
Plus daily compensation owing for each day of occupation starting August 5 th , 2022	\$16.44 (per day)