



**Order under Section 69 and 89
Residential Tenancies Act, 2006**

Citation: Vortsman v Tobias, 2022 ONLTB 13022

Date: 2022-11-24

File Number: LTB-L-027308-22

In the matter of: 2, 6526 Echo Circle
Niagara Falls Ontario L2H1Z1

Between: Corinne Vortsman, Felix Vortsman Landlord

And

Allan Ron Tobias, Ryanne Jeanne Rankin Tenant

Corinne Vortsman, Felix Vortsman(FV) (the 'Landlord') applied for an order to terminate the tenancy and evict Allan Ron Tobias, and Ryanne Jeanne Rankin (the 'Tenant') because:

- the Tenant did not pay the rent that the Tenant owes (L1 Application); and
- the Tenant has been persistently late in paying the Tenant's rent; (L2 Application).
- the Tenant or another occupant of the rental unit or someone they permitted in the residential complex have substantially interfered with the Landlord or another tenant's reasonable enjoyment and wilfully caused undue damage to the premises.

This application was heard by videoconference on August 17, 2022.

Only the Landlord FV and Landlord's Witness Elaine Lynn Mattie (ELM) attended the hearing.

As of 9:38am, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the Board. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

L1 Application – Non-Payment of Rent

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 \$1,649.56. It is due on the 1st day of each .
4. Based on the rent, the daily rent/compensation is \$54.23. This amount is calculated as follows: \$1,649.56 x 12, divided by 365 days.
5. The Tenant has paid \$0.00 into the Board since the application was filed.

9. The rent arrears owing to July 31, 2022 are \$4,948.68.
11. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
12. The Landlord collected a rent deposit of \$1,630.00 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.
15. Interest on the rent deposit, in the amount of \$33.59 is owing to the Tenant for the period from July 27, 2020 to August 17, 2022.

L2 – N8 Notice - Persistent Late Payment of Rent

16. The Landlord applied to terminate the tenancy and evict the Tenants because the Tenants have been persistently late in paying their rent.
17. Rent is due on the first day of each month. The Tenants were late seven times in ten months.
18. The Tenant has persistently failed to pay the rent on the date it was due.

N5 Notice

19. The Landlord applied for an order to terminate the tenancy and evict the Tenants because they, another occupant of the rental unit or someone they permitted in the residential complex have substantially interfered with the Landlord or another tenant's reasonable enjoyment. The Landlord served two N5 Notices of Termination on the Tenants. The first N5 Notice was served on December 31, 2020 and had a termination date of January 25, 2021. The second N5 Notice was served on July 15, 2021 and had a termination date of August 05, 2021.
20. The first N5 alleged that on November 01, 2020, the Tenants were smoking in the unit and selling illicit drugs on the property and making excessive noise from their unit, specifically, fighting and breaking things. The upstairs tenants reported this noise to the Landlord. The N5 also alleged that on December 01, 2020, the Tenants tampered with and disconnected one smoke alarm in their unit, constantly left trash/materials in the backyard, and stored stolen merchandise in their unit and the shed.
21. The second N5 alleged that on July 8, 2022, the Tenants changed the main entrance locks and other locks to the cold room without the Landlord's consent and did not provide a copy of the keys to the Landlord. The Tenants failed to pay their hydro bills, leading the hydro company to shut off the services.

Law and Analysis

22. Subsection 64 (1) of the Act states:

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.

23. Based on the uncontested evidence of the Landlord, the Tenants substantially interfered with another tenant's reasonable enjoyment by making excessive noise. I am also satisfied that the change of locks interfered with the Landlord's reasonable enjoyment or lawful right, interest or privilege as the evidence was that the Tenants did not provide him with a copy of the keys to inspect the unit about these complaints. As such, I find that the first N5 notice is valid.
24. Subsection 68(1) of the Act states entitles the Landlord to serve a non-voidable N5 if there is another incident that occurs more than seven days but less than six months after the Landlord served the first N5 notice. The second N5 Notice served on July 15, 2021, concerning an incident that occurred on July 8, 2022, complies with subsection 68(1).
25. I accept the uncontested testimony of the Landlord, and find that the Landlord proved, on a balance of probabilities, that the Tenants substantially interfered with the Landlord's and the other tenants' reasonable enjoyment of the residential complex by changing the locks to the cold room on July 8, 2022 without giving the Landlord copy of the replacement keys.

N7 Notice

26. The Landlord also served an N7 notice on July 15, 2022, with a termination date of July 26, 2022. The N7 Notice alleges that the Tenants' actions have caused the smoke detectors to become obsolete and put the safety of the other tenants and the residential complex at risk, as a fire in the Tenants' unit would not have been detected.
27. The Landlord testified that he discovered the removed smoke detectors on July 08, 2022. ELM testified to the removed detectors and provided document of all the alleged incidents.

Law and Analysis

28. Section 63 (1) of the Act provides that a landlord may give a notice of termination of the tenancy if the tenant, another occupant of the rental unit or a person the tenant permits in the residential complex wilfully causes undue damage to the rental unit.
29. Tampering with, or disconnecting/removing, a smoke alarm in a duplex unit is a serious safety hazard for all of the tenants of the building, including the Tenants themselves, as the smoke detector gives early warning of a situation of emergency and enables tenants and the Landlord to address a fire hazard in a timely fashion. A smoke detector must remain in the appropriate place and always be working.
30. I further find, based on ELM's sworn and uncontradicted testimony and the other evidence presented that, by disconnecting smoke detector in their unit, the Tenants, 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. I also find the damage to be undue because the damage is so substantial that it is not from regular wear and tear. The evidence establishes that the smoke detectors had been disconnected from the connecting wires.

31. The Landlord has incurred costs of \$1,000.00 to repair the damage and/or replace property that was damaged. The evidence before me is that the Tenants disconnected and removed the smoke detector in their unit on July 8, 2022 and the Landlord had to replace them.

Relief from Eviction

32. 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.

It is ordered that:

1. Pursuant to the L2 Application, the tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before December 5, 2022.
2. The Tenants shall pay to the Landlord \$1,000.00, which represents the reasonable costs of repairing the damage and/or replacing the damaged property.
3. The Tenant shall pay to the Landlord \$11,355.48. 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.
4. The Tenant shall also pay the Landlord daily rent/compensation of \$54.23 per day for the use of the unit starting December 6, 2022 to the date the Tenant moves out of the unit.
5. If the Tenant does not pay the Landlord the full amount owing on or before December 5, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 6, 2022 at 2.00% annually on the balance outstanding.
6. If the unit is not vacated on or before December 5, 2022, then starting December 6, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
7. 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 6, 2022.

November 24, 2022

Date Issued

Percy Laryea
Member, Landlord and Tenant Board

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 6, 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 as the tenancy is terminated

Rent Owing to December 05, 2022	\$11,818.07
Application Filing Fee	\$ 201.00
Reasonable costs of repairing the damage and/or replacing the damaged property	\$1,000.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$ 0.00
Less the amount the Tenant paid into the Board since the application was filed	- \$ 0.00
Less the amount of the last month's rent deposit	- \$ 1,630.00
Less the amount of the interest on the last month's rent deposit	- \$.33.59
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$ 0.00
Less the amount of the credit that the Tenant is entitled to	- \$
Total amount owing to the Landlord	\$11,355.48
Plus daily compensation owing for each day of occupation starting December 6, 2022:	\$54.23 (per day)

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