



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

**Citation:** Kok v Nakrour, 2022 ONLTB 12688

**Date:** 2022-11-24

**File Number:** LTB-L-046828-22

**In the matter of:** UNIT G4, 72 LAKE AVE  
RICHMOND HILL ON L4E3N3

**Between:** Francesco Virgilio Landlord

**And**

Mariam Nakrour Tenant

Francesco Virgilio (the 'Landlord') applied for an order to terminate the tenancy and evict Mariam Nakrour (the 'Tenant') because:

- 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 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.

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 October 26, 2022.

The Landlord, the Landlord’s Agent, Dino Virgilio (DV), and the Landlord’s Legal Representative, Kevin Kok, attended the hearing. Vince Iozzo (VI) appeared as a witness for the Landlord.

As of 1:34 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. 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 on December 5, 2022.

## Background

2. The residential complex is a three storey building consisting of 24 rental units. All the units are occupied and the Tenant has lived in her unit since October 1, 2008.
3. The Tenant was in possession of the rental unit on the date the application was filed.

## N7 Notice of Termination

### *Serious Impairment of Safety and Inconsistent Use*

4. The Landlord's application is preceded by an N7 Notice of Termination ('N7 Notice') deemed served on August 18, 2022 in accordance with *the Residential Tenancies Act, 2006*, (the 'Act'). The N7 Notice contains the allegations that on March 2, 2022, the Tenant's rental unit was found to have excessive amounts of garbage, clutter, and debris causing a fire hazard in the residential complex.

## Testimony of Landlord's witness – VI

5. VI testified that he is a Master Electrician and is contracted by the Landlord to perform all electrical work at the residential complex.
6. VI testified that he attended at the rental unit on March 2, 2022 for a fire inspection conducted by Vince Tripp of the Richmond Hill Fire and Emergency Services. He testified that upon entering the Tenant's unit, several fire violations were found. VI testified that the unit contained excessive amounts of combustible material stored throughout the unit and in close proximity to the ceiling, ignition sources and exits.
7. The Landlord's Legal Representative submitted the order from the fire department as evidence in which it states the rental unit is not in compliance with fire regulations and is a serious fire hazard to the Tenant and the other residents.
8. VI testified the Landlord was provided with an order from the fire inspector which demanded that the unit be cleaned up no later than April 4, 2022. He testified the Tenant was notified of the order and was told to comply.
9. VI testified that a second inspection took place on April 6, 2022. At this inspection, it was found that the Tenant made little progress in removing the clutter despite offers from the fire department and the Landlord to assist her in cleaning the unit. VI testified the Landlord had moved a large waste disposal bin to the residential complex to assist the Tenant however she declined the offer to use it and declined all offers of assistance.

## Testimony of Landlord's Agent – DV

10. DV testified that he is the Landlord's son and oversees the residential complex as his father is a senior citizen. He stated that he owns the construction company that built the residential complex. DV testified that after receiving the order from the Richmond Hill Fire and Emergency Services, he conducted an inspection of the Tenant's unit. He testified that he

advised the Tenant in writing of the requirement to clean up the unit and provided her with the compliance dates of May 17, 2022, May 24, 2022, and May 27, 2022. He testified that the Tenant requested more time to comply with the order and he agreed to the dates to May 27, 2022, June 3, 2022, and June 10, 2022.

11. DV testified that on June 23, 2022, another inspection of the rental unit was conducted with the fire department. At this inspection, it was concluded the Tenant had made little progress with clearing the unit and therefore the order issued by the fire department was not complied with.
12. The Landlord's Legal Representative submitted a series of photographs taken on June 23, 2022 as evidence. The photographs show each room in the rental unit cluttered with numerous boxes, small appliances, clothing, bedding, a mattress and box spring, garbage, and other debris.
13. The Landlord's Legal Representative submitted a series of photographs taken on July 7, 2022 and August 18, 2022 which show the same clutter, debris and garbage against the walls and to the ceiling in the unit. The excessive number of boxes, plastic bags, and clothing are blocking a safe passage through the unit.
14. DV testified that on October 25, 2022, another inspection was conducted at the Tenant's unit to determine if the areas were cleared. He testified the unit's condition remained unchanged. He stated there is debris in front of all the baseboard heaters, the fire exits are blocked, there is no access to the bedroom, and items are piled up against the fridge.
15. DV testified that he has offered the Tenant assistance to clean up her unit on numerous occasions but the Tenant has continually declined his offers.
16. DV testified the Tenant is occupying the unit and is not using the rental unit for storage therefore, the allegation of inconsistent use of the unit is dismissed.

### **Analysis**

17. 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.

18. In this case, the allegation of serious impairment of safety is with respect to the Tenant's rental unit and the excessive clutter within it. The Landlord testified that the rental unit was inspected on March 2, 2022 and re-inspected on April 6, 2022, June 23, 2022, July 1, 2022, August 18, 2022, and October 25, 2022 and on each occasion, there were no improvements to the state of the unit, the unit continued to be more cluttered, and the unit remained in a

hazardous condition. The Landlord provided several offers of support to the Tenant to assist in maintaining her housing and refused all offers of support.

19. 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.
20. Based on the uncontested evidence before the Board, I satisfied the Tenant's conduct in maintaining the unit in a state of extreme clutter, has seriously impaired the safety of another person. The excessive amounts of combustible material stored throughout the unit increases the risk of fire jeopardizing the safety of the Tenant and the other residents. The Tenant has been afforded numerous opportunities and offers of support to clean her unit but has not done anything to improve the state of the unit. I find it foreseeable that the Tenant's lack of inaction could result in a serious safety risk to another person. I therefore find that the Tenant has seriously impaired the safety of another, and these acts occurred in the residential complex.

### Daily Compensation

21. The Tenant was required to pay the Landlord \$1,570.26 in daily compensation for use and occupation of the rental unit for the period from August 31, 2022 to October 26, 2022.
22. Based on the Monthly rent, the daily compensation is \$27.55. This amount is calculated as follows: \$837.93 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 of \$700.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$162.30 is owing to the Tenant for the period from October 1, 2008 to October 26, 2022.
25. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

### 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's Legal Representative submitted 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 negligent 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 her behaviour.

**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 December 5, 2022.
2. 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.
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 December 6, 2022.
4. The Tenant shall pay to the Landlord \$707.96, which represents compensation for the use of the unit from August 31, 2022 to October 26, 2022, less the rent deposit and interest the Landlord owes on the rent deposit.
5. The Tenant shall also pay the Landlord compensation of \$27.55 per day for the use of the unit starting October 27, 2022 until the date the Tenant moves out of the unit.
6. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
7. The total amount the Tenant owes the Landlord is \$893.96. The Landlord must deduct any monies received from the Tenant from the amount above.
8. 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 4.00% annually on the balance outstanding.

**November 24, 2022**

**Date Issued**

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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 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.