



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

Citation: Hastings Local Housing Corporation v Sanderson, 2022 ONLTB 12617

Date: 2022-11-23

File Number: LTB-L-035646-22

In the matter of: G, 231 PINE ST
BELLEVILLE ON K8N2N3

Between: Hastings Local Housing Corporation Landlord

And

Krystal Sanderson Tenant

Hastings Local Housing Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Krystal Sanderson (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 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; 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.

This application was heard by videoconference on October 24, 2022.

Only the Landlord's Agent, Melissa Hancock attended the hearing.

As of 1:45 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. The Landlord's Agent stated that on October 19, 2022, the Tenant was provided with the Landlord's disclosure and was aware of the application and the hearing being held on October 24, 2022.

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 4, 2022.

Background

2. The residential complex is comprised of fifty seven rental units. The building's residents are mostly families with 164 children under the age of 18 registered as residing in the complex.
3. The Tenant was in possession of the rental unit on the date the application was filed.

N5 Notice of Termination*Substantial Interference with reasonable enjoyment*

4. The Landlord's application is preceded by an N5 notice of termination ('N5 Notice') deemed served on June 1, 2022 in accordance with *the Residential Tenancies Act, 2006* (the 'Act'). The notice of termination alleges that the Tenant has parked a motorcycle on the patio of the rental unit, the Tenant has not provided proof of insurance in accordance with the tenancy agreement, the Tenant has removed the smoke detectors from the rental unit, her seven year old son caused damage to a fence in the residential complex, and the Tenant, an occupant, or a guest of the Tenant has caused significant, negligent damage to the rental unit. The Landlord is seeking compensation for the damage in the amount of \$1,507.22.
5. The Landlord's Agent submitted the Tenant did not stop the conduct or activity or correct the omission within seven days after receiving the N5 Notice as the conduct continued during the period from June 7, 2022 to June 13, 2022 as the motorcycle is still parked on the patio and the Tenant has not repaired the damage nor paid the compensation to the Landlord. Based on the evidence before me, I am satisfied the Tenant did not void the N5 Notice in accordance with s.64(3) of the Act.
6. The Landlord's Agent submitted a series of photographs as evidence. These photos showed the following:
 - a) Photo 1 – motorcycle on the patio of the rental unit
 - b) Photos 2 - 5 – damage to the drywall
 - c) Photo 6 – damage to the stairway handrail
 - d) Photos 7 – 13 – several holes in the walls throughout the unit
7. The Landlord's Agent also submitted two invoices which outlined the cost for the damages to the fence and the rental unit. The Landlord's Agent submitted the Landlord would not be seeking compensation for the fence damage as there was no evidence submitted to support the claim. She submitted the Landlord is seeking compensation in the amount of \$1,474.57 for damages to the rental unit.

8. Based on the uncontested evidence before me, I am satisfied the Tenant has substantially interfered with the Landlord's lawful rights, privileges, and interests by parking a motorcycle on the patio and is in breach of the tenancy agreement. I also find the Tenant, an occupant, or guest of the Tenant has caused significant damage to the rental unit and this damage is beyond normal wear and tear. I also find the Tenant shall pay compensation to the Landlord for the damages to the rental unit.

N6 and N7 Notices of Termination

Illegal Act and Serious Impairment of Safety

9. The Landlord's application was also preceded by an N6 notice of termination and an N7 Notice of termination ('N6 and N7 Notices'), both deemed served on June 1, 2022 in accordance with the requirements of the Act.
10. The Landlord's N6 and N7 Notices rely on identical schedules in which the Landlord alleges that on February 23, 2021, April 28, 2022, and May 20, 2022, the Tenant removed or tampered with the smoke detectors in the rental unit.
11. As both the N6 and N7 Notices rely on essentially the same alleged facts, they will be considered together.
12. The Landlord's Agent submitted that on February 23, 2021, an inspection of the rental unit was conducted and it was found the Tenant has removed two of the three smoke detectors from the unit. She submitted the Landlord replaced the smoke detectors and sent a letter to the Tenant addressing the importance of the fire safety equipment in the rental unit.
13. The Landlord's Agent submitted that on April 28, 2022 and May 20, 2022 similar inspections were conducted and again the Tenant had removed the smoke detectors. The Landlord's Agent submitted the Tenant advised that the detectors "kept going off" so she removed them. She further submitted that each time, the Landlord replaced the smoke detectors in the unit.
14. 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.

15. In this case, the allegations of an illegal act and impaired safety are with respect to the Tenant removing the smoke detectors from the rental unit.
16. Section 6.3.3.6 of the *Fire Prevention and Protection Act, 1991* (Ontario Regulation 213/17) states that no person shall disable a smoke alarm. The Tenant's actions have compromised the functionality and purpose of the smoke alarm.

17. 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.
18. Based on the uncontested testimony of the Landlord and the evidence before me, I am satisfied the Tenant, an occupant, or guest of the Tenant has committed an illegal act and seriously impaired the safety of another person by wilfully removing the smoke detectors from the rental unit. I find it foreseeable that the act of removing the necessary fire safety equipment could have resulted in a serious health risk. I therefore find that the Tenant has seriously impaired the safety of another, and these acts occurred in the residential complex.

Daily compensation

19. Based on the monthly rent, the daily compensation is \$39.48. The amount is calculated as follows: \$1,201.00 x 12, divided by 365 days.
20. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
21. There is no last month's rent deposit.

Section 83 considerations

22. 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.
23. The Landlord's Agent 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 Landlords are seeking an 11-day eviction order.
24. 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 her 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 her negligent and audacious 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 4, 2022.

2. If the unit is not vacated on or before December 4, 2022, then starting December 5, 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 5, 2022.
4. The Tenant shall pay to the Landlord \$4,540.77, which represents compensation for the use of the unit from June 1, 2022 to October 24, 2022.
5. The Tenant shall also pay the Landlord compensation of \$39.48 per day for the use of the unit starting October 25, 2022 until the date the Tenant moves out of the unit.
6. The Tenant shall also pay the Landlord \$1,474.57 for undue damages to the rental unit.
7. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
8. The total amount the Tenant owes the Landlord is \$6,201.34. The Landlord must deduct any monies received from the Tenant from the amount owing above.
9. If the Tenant does not pay the Landlord the full amount owing on or before December 4, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 5, 2022 at 4.00% annually on the balance outstanding.

November 23, 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 of the Tenant expires on June 5, 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.