



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

Citation: ANDERSON v HEMLOW, 2022 ONLTB 12585

Date: 2022-11-23

File Number: LTB-L-001335-22

In the matter of: 1, 910 BARTON STREET EAST
HAMILTON ONTARIO L8L3B9

Between: Todd Anderson Landlords
Manmohan Seth
Manoj Rastogi

And

William Hemlow Tenant

Todd Anderson, Manmohan Seth, and Manoj Rastogi, (the 'Landlords') applied for an order to terminate the tenancy and evict William Hemlow (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 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.

The Landlord, Todd Anderson, and the Landlord’s Legal Representative, Kimberly Holleran, 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 Landlords have proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated on December 4, 2022.

Background

2. The residential complex is a six-plex consisting of two attached buildings with four units in one building and two in the other. The Tenant occupies the main floor and basement in building with four units. The Tenant has access to the furnace in the basement of his unit. This furnace heats two of the four units in the first building.
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 Landlords' application is preceded by an N5 notice of termination ('N5 Notice') deemed served on December 4, 2021 in accordance with the *Residential Tenancies Act, 2006* (the 'Act'). The notice of termination contains the allegations that for the period of June 23, 2021 to November 26, 2021, the Tenant, an occupant of the rental unit or someone the Tenant permitted in the unit substantially interfered with the reasonable enjoyment of the other tenants by fighting, yelling, screaming, and allowing the fire alarm to blare while cooking. It is also alleged that the Tenant's dog was barking excessively and the Tenant's girlfriend was yelling obscenities at another tenant's daughter.
5. The Landlord testified that 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 December 5, 2021 to December 11, 2021. 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 testified he has received numerous complaints from the other tenants with respect to the Tenant's behaviour. He testified the Tenant, the occupant, and guests of the Tenant are constantly fighting, screaming, and yelling during all hours of the day and night. He testified he has also received complaints that the Tenant has left the fire alarm blaring while he or his occupants and guests are preparing food in the unit. He further testified he discovered that there had been unreported fire in the unit as the stove was black and some areas of the stove had melted.
7. The Landlords' Legal Representative submitted a series of photographs as evidence which show the following:
 - a) Photos 1 – 9: the state of unit which shows a previous fire in the unit in the kitchen and garbage, and debris strewn throughout the unit.

8. Based on the uncontested testimony and the evidence before me, I am satisfied the Tenant has substantially interfered with the reasonable enjoyment of another tenant and the Landlords' lawful rights, privileges, and interests. I say this because of the Tenant's ongoing, disruptive behaviour despite the Landlords' attempts to address the issues with the Tenant, and the photographs show the Tenant's blatant disregard of the rental unit.

N6 and N7 Notices of Termination

Illegal Act and Serious Impairment of Safety

9. The Landlords' application was also preceded by an N6 notice of termination and an N7 notice of termination ('N6 and N7 Notices'), both deemed served on December 4, 2021 in accordance with the requirements of the Act.
10. The Landlords' N6 and N7 Notices rely on identical schedules in which the Landlords allege that on June 24, 2021, the Tenant's dog bit another tenant and on July 4, 2021, lunged at another tenant in the hallway while unleashed.
11. The N6 and N7 Notices also contain the allegations that the Tenant or occupant of the rental unit had tampered with the furnace by removing the electrical wires and circuit board, and by screwing drywall screws into the furnace housing.
12. As both the N6 and N7 Notices rely on essentially the same alleged facts, they will be considered together.
13. The Landlord testified that he received a complaint from another tenant that the Tenant's unleashed dog had attacked her while she was at the mailbox. The other tenant received medical attention for her injuries. The Landlord testified that he received another complaint from a tenant who informed him that the Tenant's dog lunged at her while in the hallway. He stated the other tenant was not injured. The Landlord further testified that it his belief the dog was euthanized approximately two months ago.
14. The Landlord testified he contacted a HVAC technician on October 25, 2021 as he had received a complaint from the tenant in unit 2 of no heat in the unit. He testified the technician advised him that the electrical wires and circuit board had been ripped out and drywall screws were found imbedded in the furnace housing. He testified that on October 26, 2021 he spoke to the occupant of the Tenant's unit after receiving a complaint again of no heat in the other unit who informed him that she had shut the furnace down again. He testified that on October 30, 2021, the same HVAC technician attended at the residential complex who advised him the wires and circuit board had been ripped out again.
15. The Landlords' Legal Representative submitted a series of photographs as evidence which show the following:
 - b) Photos 10; the furnace with the wires ripped out and furnace housing removed

16. The Landlords' Legal Representative also submitted two invoices from Jeff's Heating as evidence which show:

- c) October 25, 2021 – replaced all wiring and circuit board - \$250.00
- d) October 30, 2021 – replaced all wiring and circuit board - \$250.00

17. Although the Landlords' evidence submitted includes costs of damages to furnace, neither the Landlords' N5 Notice or L2 application include the request of compensation for damages therefore these costs will not be awarded to the Landlords.

18. Section 63(1) of the Act says:

Despite section 62, a landlord may give a tenant notice of termination of the tenancy that provides a termination date not earlier than the 10th day after the notice is given if the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex,

(a) wilfully causes undue damage to the rental unit or the residential complex; or

(b) uses the rental unit or the residential complex in a manner that is inconsistent with use as residential premises and that causes or can reasonably be expected to cause damage that is significantly greater than the damage that is required in order to give a notice of termination under clause (a) or subsection 62(1).

19. 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.

20. In this case, the allegations of wilful damage and impaired safety are with respect to the Tenant, occupant, or guest of the Tenant, ripping out the wires and circuit board in the furnace and screwing drywall screws into the furnace housing.

21. 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.

22. 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 the illegal act of mischief by wilfully removing the wires and circuit board of the furnace and has seriously impaired the safety of another person by tampering with the furnace. I find it foreseeable that the act of removing the necessary operating parts of a furnace 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

23. Based on the monthly rent, the daily compensation is \$49.32. The amount is calculated as follows: \$1,500.00 x 12, divided by 365 days.
24. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
25. There is no last month's rent deposit.

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 Landlords' 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 Landlords are seeking an 11-day expedited 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:

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. **The Sheriff is requested to expedite the enforcement of this order.**

4. The Tenant shall pay to the Landlord \$14,646.58, which represents compensation for the use of the unit from December 21, 2021 to October 24, 2022.
5. The Tenant shall also pay the Landlord compensation of \$49.32 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 to the Landlord \$201.00 for the cost of filing the application.
7. The total amount the Tenant owes the Landlord is \$14,847.58. The Landlord must deduct any monies received from the Tenant from the amount owing above.
8. If the Tenant does not pay the Landlord the full amount owing on or before November 28, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 29, 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.