



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

Citation: Stanbar Properties Limited v Gattie, 2022 ONLTB 12652

Date: 2022-11-22

File Number: LTB-L-029463-22

In the matter of: 710, 265 MELVIN AVE
HAMILTON ON L8H2K3

Between: Stanbar Properties Limited Landlord

And

Benjamin Gattie Tenant

2022 ONLTB 12652 (CanLII)

Stanbar Properties Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Benjamin Gattie (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 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 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 31, 2022.

The Landlord's Agents, Ion Belu (IB) and Maureen Stewart (MS), attended the hearing. Edyta Pawlowski (EP) and Rachel Kauffedlt (RK) appeared as witnesses for the Landlord.

As of 1:55 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 3, 2022.

Background

2. The residential complex is an eight storey building consisting of 221 rental units. The occupants are mostly senior citizens.
3. The Tenant was in possession of the rental unit on the date the application was filed.

N5 Notices of Termination

Substantial Interference with reasonable enjoyment

4. The Landlord's application is preceded by a first N5 notice of termination ('1st N5 Notice') deemed served on March 30, 2022, and a second N5 notice of termination ('2nd N5 Notice') deemed served on May 9, 2022 in accordance with the *Residential Tenancies Act, 2006* (the 'Act').
5. The 1st N5 Notice contains the allegations that on February 22, 2022, March 14, 2022, and March 22, 2022, the Landlord received numerous complaints from other tenants in the residential complex that the Tenant was causing excessive noise and yelling profanities in his unit.
6. On a 1st N5 Notice, a tenant is afforded the opportunity to void the notice by correcting the offensive behaviour or stopping the activity within seven days of being served with the N5 notice. In this case, the voiding period was from March 31, 2022 to April 6, 2022.
7. The Landlord's Agent, IB, submitted that the Tenant did not stop the conduct or activity or correct the omission within seven days after receiving the 1st N5 Notice as the conduct continued during the period from March 31, 2022 to April 6, 2022. 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.
8. The Landlord gave the Tenant a 2nd N5 Notice which contains the allegations that on April 7, 2022 and April 9, 2022, the Tenant was causing excessive noise by yelling and swearing from his balcony and banging on the balcony with a hammer.

N7 Notice of Termination

Serious Impairment of Safety

9. The Landlord's application is also preceded by an N7 notice of termination ('N7 Notice') deemed served on May 9, 2022. The N7 Notice contains the allegations that on May 2, 2022, the Tenant was causing excessive noise by yelling, banging on the walls, and slamming doors. It is also alleged that on May 2, 2022, the Tenant was witnessed in the doorway of his unit carrying a large knife and yelling at other residents as they walked by.

Testimony of Landlord's witness – EP

10. EP testified that she is employed by the Landlord as the building manager. She provided affirmed testimony corroborating all the allegations contained in both N5 Notices outlined in paragraphs 7 and 8 above. EP testified the Tenant's erratic behaviour is ongoing and has escalated.
11. EP testified that several letters have been given to the Tenant with respect to his conduct and the police have been called on at least two occasions as she was concerned for the Tenant's safety as well as the safety of the other residents. She testified that the Tenant has been unresponsive to the letters as well as the attendance of the police.
12. EP testified that on May 2, 2022, she received a telephone call from another tenant who had witnessed the Tenant standing outside of his unit in the hallway with a large knife. She testified that she contacted the police who attended at the rental unit. She stated that police took her statement however the Tenant would not open the door to speak to the police.

Testimony of Landlord's witness - RK

13. RK testified that she has lived in the residential complex for twenty-one years and lives next door to the Tenant. She testified that on April 5, 2022, she witnessed the Tenant screaming and yelling on his balcony. She further testified that the Tenant's behaviour was very disturbing and she was concerned for her safety.
14. RK testified that on May 2, 2022, the Tenant was yelling and screaming in the hallway "I warned you". She testified that on May 3, 2022, the Tenant was banging on the wall calling her a "bitch". RK testified that she has witnessed the Tenant's erratic behaviour on numerous occasions. She testified that while on the balcony, the Tenant has made "shooting her with a gun" gestures, yelled obscenities at her, and has taken photographs of her. RK further testified that she has attached cable ties to her balcony rails in an effort to protect herself from the Tenant should he attempt to access her unit via the balcony.
15. RK testified that on September 11, 2022, the Tenant was witnessed walking in the underground parking garage unclothed and carrying a knife. She stated the police were called and the Tenant was arrested. She testified that on October 16, 2022, the Tenant threatened her harm. She called the police who attended at the residential complex and the Tenant was subsequently arrested again. RK stated that she is very scared of the Tenant as his behaviour is unpredictable and erratic and she does not know what he will do next.
16. IB submitted a series of video recordings as evidence. In these videos, the following can be seen:
 - a) Video 1 – March 15, 2022 - audio recording of the Tenant threatening harm
 - b) Videos 2, 3, 4, 5 – September 11, 2022 – the Tenant unclothed exiting the elevator, and in and exiting the underground parking garage carrying a knife
 - c) Videos 6, 7, 8 – October 16, 2022 – the Tenant being arrested by police

Analysis

N5 Notices

17. Section 64 of the Act states:

(1) 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.

18. The uncontested testimony of EP and RK establishes that on the dates contained in the 1st N5 Notice and the 2nd N5 Notice, the Tenant has caused excessive noise and disturbances in the residential complex by yelling, screaming, banging on doors and the balcony. Despite the attempts by the Landlord to deescalate the Tenant's conduct, the Tenant has continued the behaviour and I find the Tenant has substantially interfered with the reasonable enjoyment of the other tenants in the residential complex.

N7 Notice

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 allegation of serious impairment of safety is with respect to the Tenant threatening another resident with physical harm and by being in the hallway and the underground parking garage with a large knife.

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's witnesses and the evidence before me, I am satisfied the Tenant has seriously impaired the safety of another person. I say this because the Tenant can be seen carrying a large knife inside and outside the parking garage as other residents are walking past him. I find it foreseeable that such an act could have

resulted 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

23. The Tenant was required to pay the Landlord \$5,841.21 in daily compensation for use and occupation of the rental unit for the period from May 22, 2022 to October 31, 2022.
24. Based on the Monthly rent, the daily compensation is \$35.84. This amount is calculated as follows: \$1,090.00 x 12, divided by 365 days.
25. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
26. The Landlord collected a rent deposit of \$1,155.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$11.96 is owing to the Tenant for the period from December 21, 2021 to October 31, 2022.
27. 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

28. 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.
29. 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 Landlord is seeking an 11-day eviction order.
30. 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 volatile 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 3, 2022.
2. If the unit is not vacated on or before December 3, 2022, then starting December 4, 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 4, 2022.
4. The Tenant shall pay to the Landlord \$4,674.25, which represents compensation for the use of the unit from May 22, 2022 to October 31, 2022, less the rent deposit and interest the Landlord owes on the rent deposit.
5. The Tenant shall also pay the Landlord compensation of \$35.84 per day for the use of the unit starting November 1, 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 \$4,860.25.
8. If the Tenant does not pay the Landlord the full amount owing on or before December 3, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 4, 2022 at 4.00% annually on the balance outstanding.

November 22, 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 4, 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.