



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

Citation: Haller v Martin, 2022 ONLTB 11741

Date: 2022-11-09

File Number: LTB-L-008867-22

In the matter of: 7, 49 Hilltop Drive
Cambridge ON N1R1T2

Between: Michael Haller Landlord

And

Chelsea Martin Tenant

Michael Haller ('MH' or the 'Landlord') applied for an order to terminate the tenancy and evict Chelsea Martin ('CM' or 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.

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 November 2, 2022.

The Landlord, the Landlord's Agent, Amy Shicoyne ('LLA'), and the Tenant attended the hearing. The Tenant consulted with Tenant Duty Counsel prior to the commencement of the hearing.

Determinations:

1. The application was filed by the Landlord on February 18, 2022. The Tenant was in possession of the rental unit on the date the application was filed.
2. 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, I am ordering the termination of the tenancy taking into consideration the circumstances disclosed by the respective parties. I note that I asked the parties to provide post-hearing submissions and I can confirm that only the Landlord provided submissions.
3. The Landlord served the Tenant with two N5 notices of termination, providing adequate details and dates when the claimed undue noise (slamming doors, yelling, shouting, etc.) emanated from the rental unit.
4. The Landlord testified the first N5 notice was successfully voided by the Tenant by January 26, 2022 (which was served on January 16, 2022) as there was a stop for a short period of time in respect of the overnight and early morning undue noise incidents.

5. The Landlord testified the second N5 notice (which was served on February 11, 2022) sets out the details of the February 3-7, 2022 recurrence of the same type of undue noises and disturbances that had precipitated the need for the first N5 notice.
6. The Landlord explained the rental unit building complex comprises 12 units and the other tenants of the building have presented many written complaints about the Tenant and her guests who frequent the rental unit. He stated his belief that the Tenant has addiction problems and her guests who visit her regularly are also addicts.
7. The Landlord adduced two exhibits into evidence to corroborate the claims of undue noise and disruption that the rental building residents experienced because of the Tenant and/or the Tenant's guests. He led exhibit LL#1, which is a handwritten complaint dated October 31, 2022 by a Lorraine Andrews (another tenant of the building who described loud fights between the Tenant and her boyfriend) and exhibit LL#2, which is a video recording from one of the building's common area surveillance cameras taken in February 2022. The video recording was played by me during the hearing and due to technical difficulties and the fact the Tenant was participating in the hearing by telephone, I described what I could see in the 4 minute video to those present. (In short, the Tenant was passed out at night in the front entrance, and she was assisted by two people to her feet.) The Landlord alluded to a few other written complaints that had been disclosed to the LTB and Tenant in advance of the hearing, but because the complainants were not present, the Landlord elected to call forward LLA to provide direct witness testimony.
8. LLA is the property manager who is in effect the on-site superintendent for the rental unit building complex. She lives in unit 9. LLA identified and confirmed the contents of LL#1 and LL#2 and then went on to testify about the numerous complaints she has received about the Tenant's guests who transact drug deals in the parking lot, yell up to the Tenant's unit to gain access to the building, and the alleged issues with other residents' cars being broken into. LLA mentioned that once, even the Tenant broke into another resident's car.
9. LLA stated her belief that the Tenant has substance abuse addiction issues and LLA said she recently spoke with the Lutherwood case worker assigned to the Tenant, who told LLA that the Tenant has refused all help and supports.
10. LLA also testified about her first-person experiences recently with the Tenant and her visitors. LLA described two incidents concerning two of the Tenant's visitors who were passed out in the hallway and police/ambulances had to be called for. The first incident happened in late January/February 2022, and the second incident happened in late February/March 2022. For the second incident, LLA said the Tenant told her that her friend had been on fentanyl. Going further, throughout the February to April 2022 timeframe, LLA said she had personally witnessed the Tenant's visitors dealing drugs in the parking lot and in one particular incident, she personally intervened to stop the deal from being completed.
11. The Tenant denied all allegations against her. She first stated that the N5 notice that the Landlord submitted with the application had been altered. She wanted a chance to prove that the N5 had been altered and asked for a little time to get a copy of the original N5 into the LTB. The Landlord denied the N5s were altered at all. The Tenant also asked for a short reprieve/chance to let her submit proof of her medical and addiction diagnoses, conditions and supports.

12. Based on the Tenant's request, I agreed to let the Tenant send in the N5 that she claimed was the original N5, and which was allegedly different to either of the N5s presented under the application. As well, I asked her to send in whatever medical or other supporting documentation that she might have that would provide proof of her medical and personal issues (reference paragraphs 14 and 16 below). In accordance with the Tenant's request, I directed the Tenant to submit post-hearing any submission she might have by 5:00 pm on November 3, 2022. She agreed. I then gave the Landlord one day afterward to submit his response/rebuttal to whatever the Tenant might send into the LTB. The Landlord was given until 5:00 pm, November 4, 2022, to make post-hearing submissions.
13. I confirm that nothing at all was received by the LTB from the Tenant, neither by the November 3, 2022 deadline nor past that date up to the date this order was written. However, I can confirm that the Landlord did send in submissions by the November 4, 2022 deadline, to point out the Tenant made no submission whatsoever, that the N5s submitted were correct and unaltered, and to provide supplementary submissions on incidents that happened post-hearing. For the record, I have not considered at all those post-hearing incidents – they were not part of the hearing which both parties participated in, and further, I did not request any submission regarding additional events or incidents.
14. The Tenant testified she is an addict who is on a diagnosed regimen of methadone (for addiction treatment). She testified she suffers from cystic fibrosis and sees a respirologist for her symptoms. The Tenant stated she also receive mental health support (from the Cambridge Mental Centre). As well, the Tenant testified that an Officer 'Christopher Rose' (I am not certain of the spelling) checks in on her regularly to ensure she is doing well.
15. The Tenant testified she lives on her own and admits the "odd guest" now and then to her unit – which when asked to clarify, she said means she has guests once or twice a week. The Tenant stated her belief that LLA and the other residents simply believe that everything that happens with her is about "drugs and drug dealing" but that is not true.
16. Further, the Tenant denied that she or her guests have made the undue noises and disruptions that are complained about by the Landlord in the application and by the other residents of the building. The Tenant testified that sometimes, her meds sometimes causes complications for her so she might appear intoxicated but nothing more. She said she feels harassed by LLA as there always seems to be cameras pointing at her whenever LLA appears on the scene. The Tenant testified that it is LLA who has harassed her and her guests by confronting her guests and turning them away at times from the building.
17. The Tenant testified she is receiving ongoing support from Lutherwood and denies that she ever refused their help.
18. Finally, the Tenant admitted that she once entered into another resident's car by inadvertent error, but it was not a case of breaking into that person's car.
19. Based on the testimonies and submissions, and on a balance of probabilities, I find the Tenant's or Tenant's guest's conduct has substantially interfered with another tenant and/or the Landlord and with the Landlord's lawful right, privilege or interest of the Landlord, in respect of the repeated instances of claimed undue noise and disruptions. As I accept that the first N5 notice was successfully voided by the Tenant – nothing was provided to contest the Landlord's submissions on this point -- I find the Landlord's basis of claim contained in the second N5 notice to be successful under this application.

20. To be clear, I have turned my attention and consideration to the claims and evidence for the second N5 notice only in order to arrive at my findings given in paragraph 19 above.
21. My finding of substantial interference is limited to the claims respecting the undue noise and disturbances, which I find most likely happened as the Landlord claimed them to have happened. I make no findings with respect to any drug related claims or alleged incidents relating to drugs, which seem to have been raised, discussed and presented on during this hearing.
22. The Tenant was given a chance, at her own request, to provide the LTB post-hearing with evidence that she said she had before her and that she would need to provide so that her testimony (rebuttal or denial submissions) could be substantiated. For the record, I received nothing in that regard from the Tenant (reference paragraph 13 above).
23. As such, I am left only with the Tenant's testified-to denials about the undue noise and disruptions, but little else. I do note that I have considered the Tenant's testimony as part of the circumstances that I asked her for near the end of the hearing.
24. On the other hand, the better evidence and the more persuasive case came from the Landlord's own submissions including exhibits LL#1, LL#2 and then from LLA's testimony. In my view, the Landlord's evidence as a whole was sufficient for me to determine the Tenant and/or her guests have most likely continued to create undue noise and disruptions to the other residents of the building from February 3, 2022 (in respect of the second N5) onwards.
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 \$1,100.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$31.29 is owing to the Tenant for the period from March 1, 2020 (date the deposit was paid) to November 2, 2022 (date of this hearing).
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.
28. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, and find that it would not be unfair to postpone the eviction until January 31, 2023 pursuant to subsection 83(1)(b) of the Act. I am postponing the termination based on my consideration of the Tenant's own testimony about her personal/medical conditions weighed against the Landlord's own testified-to circumstances concerning the other residents' concerns.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated in a final (non-remedial) way. The Tenant must move out of the rental unit on or before January 31, 2023.
2. If the unit is not vacated on or before January 31, 2023, then starting February 1, 2023, 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 February 1, 2023.
4. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing on or before November 30, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 1, 2022 at 4.00% annually on the balance outstanding.
6. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

November 9, 2022
Date Issued

Alex Brkic
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 August 1, 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.