



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

**Citation:** Services and Housing in the Province v Brocklebank, 2022 ONLTB 10570

**Date:** 2022-11-04

**File Number:** LTB-L-032580-22

**In the matter of:** 205, 25 RAMBLER DRIVE  
BRAMPTON ON L6W1E4

**Between:** Services and Housing in the Province Landlord  
(a.k.a. S.H.I.P.)

**And**

Carrie Brocklebank Tenant

Services and Housing in the Province (a.k.a. S.H.I.P.) (the 'Landlord') applied for an order to terminate the tenancy and evict Carrie Brocklebank (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.

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 September 28, 2022.

The Landlord's Agent, Lyndon Pearson (LP), and the Landlord's Legal Representative, Sean Beard, attended the hearing. Claudia Martin (CM) appeared as a witness for the Landlord.

Erin McCabe also attended the hearing for the only purpose of providing the technical equipment to enable the Tenant to participate in the hearing. The Tenant did not attend.

As of 1:56 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 claim for compensation in the application. Therefore, the tenancy is terminated on November 15, 2022.
2. The Tenant was in possession of the rental unit on the date the application was filed.

Background

3. The Landlord is a non-profit housing provider who rents units from the owner of the building for the purpose of providing subsidized housing to qualified persons.
4. The rental unit is a rent-g geared-to-income unit located in an 11-storey building which contains 121 rental units. The monthly rent is \$497.00.
5. The tenancy commenced on November 1, 2017. There is no last month's rent deposit being held by the Landlord.

N5 Notice of Termination

6. On May 19, 2022, the Landlord gave the Tenant a valid N5 notice of termination ('N5 Notice') with a termination date of June 19, 2022. The notice of termination alleges that on May 6, 2022 at approximately 7:30 a.m., the Tenant activated the fire alarm in the building. The City of Brampton Fire and Emergency Services attended at the building and found no fire conditions.
7. On an N5 Notice, a tenant is afforded the opportunity to void by correcting the offensive behaviour or stopping the activity within seven days of being served with the N5 Notice. In this particular case, the voiding period was from May 31, 2022 to June 6, 2022 inclusive. The Landlord's Legal Representative submitted that the Tenant voided the N5 Notice within the seven-day period permitted by subsection 64(3) of the *Residential Tenancies Act, 2006* (the 'Act') as no further incidents occurred. As such, this application will proceed based on the N6 and N7 notices of termination.

N6 and N7 Notices of Termination

8. On May 19, 2022, the Landlord gave the Tenant valid N6 and N7 notices of termination ('N6 and N7 Notices') with a termination date of June 19, 2022. The notice of termination contains the same allegation as the N5 Notice:
  - Roughly 7:30 a.m. May 6, 2022 – Fire alarm was activated in the building. Brampton Fire and Emergency Services arrived at the property to investigate. Alarm was activated on the 2nd floor by the Tenant. No fire conditions. Tenant admitted to pulling the alarm to get her guests to leave the unit.

As the N6 and N7 Notices rely on identical allegations, they will be considered together.

## Illegal Activity and Impairment of Safety

### Landlord's evidence

#### Testimony of CM

9. CM testified that she is employed by the owner of the residential complex as a Residential Liaison in the leasing and administration department.
10. CM testified that she is familiar with the Tenant. She testified that on May 6, 2022 at approximately 7:30 a.m., the fire alarm was activated on the 2<sup>nd</sup> floor of the building. She stated that Brampton Fire and Emergency Services attended at the building, and it was evacuated. CM further testified that this evacuation caused panic with the other residents as it was early in the morning, and they were awoken from sleep to the fire alarms going off in the entire building.
11. CM testified that she spoke to the Tenant who admitted to pulling the fire alarm because she was trying to force the guests in her unit to leave. She testified that the Tenant occupies a one-bedroom unit and that she is renting space to six other people at a rate of \$15.00 per night. CM added that three of the occupants left the unit however they were angry because they wanted their money back.
12. CM testified that she advised the Tenant that renting space in the rental unit was not allowed and anyone living in the unit must leave. She testified that the Tenant did not comply with her request and the Tenant was told again in June and July that she could not rent space in her unit for money. She further testified that in August 2022 only one occupant was still living in the unit.

#### Testimony of LP

13. LP testified he is employed by the Landlord as a Tenant Relations Officer. He testified that a tenant in the Landlord's program is not allowed to benefit financially by renting space or rooms in their rental unit. He testified that such activity would affect the Tenant's rent subsidy. He testified that the Tenant would need to seek the Landlord's permission to have any occupants in the rental unit and forms are required to be completed. He further testified the Tenant did not seek permission.
14. LP testified that after learning the Tenant was renting space in the unit, she was contacted by telephone and in writing to cease the activity. He testified the Tenant was offered support to assist her in preserving her tenancy but did not respond to the Landlord's correspondence or phone calls.

## Analysis

15. Section 61 of the *Residential Tenancies Act, 2006* (the 'Act') states:

- 1) A landlord may give a tenant notice of termination of the tenancy if the tenant or another occupant of the rental unit commits an illegal act or carries on an illegal trade,

business or occupation or permits a person to do so in the rental unit or the residential complex.

16. Section 437 of the *Criminal Code* (R.S.C., 1985, c. C-46) states:

Every one who wilfully, without reasonable cause, by outcry, ringing bells, using a fire alarm, telephone or telegraph, or in any other manner, makes or circulates or causes to be made or circulated an alarm of fire is guilty of,

- (a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or
- (b) an offence punishable on summary conviction.

17. Section 66 of the Act states:

(1) 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. Based on the uncontested evidence and testimony before me, I find that on May 6, 2021, the Tenant pulled the fire alarm; this was a false alarm that fire services and the Landlord had to respond to and is an illegal act pursuant to section 437 of the *Criminal Code*. I further find this illegal act took place within the residential complex.

19. It was from the Tenant's actions of pulling the fire alarm the Landlord learned the Tenant was renting space in her unit for her financial gain. This is against the Landlord's policy as this is a subsidized unit and all income must be disclosed to the Landlord as well permission to have other occupants in the unit must be sought.

20. I also find that the Tenant's actions seriously impaired the safety of the other residents in the residential complex. I say this because it was required that the building be evacuated of all residents, and this caused panic amongst the other residents. This evacuation took place in the early hours of the morning in which the residents were woken from sleep believing there was an emergency.

### **Section 83 considerations**

21. Pursuant to section 83 of the Act, when the Board hears an application for an order terminating a tenancy, it must consider whether there are any circumstances that support granting relief from eviction.

22. The Landlord is seeking termination of the tenancy. The Landlord's Legal Representative submitted that by the Tenant pulling the fire alarm, she caused panic with the other residents, impairing their safety. He also submitted the Tenant continues to rent space in her unit contrary to the Landlord's protocol.
23. I find it significant that the Tenant did not attend the hearing to present any evidence or submissions in favour of granting relief from eviction. Further, steps were taken to accommodate her attendance in the videoconference hearing however she did not show up nor provide any reason why she could not attend.
24. 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.

### **Daily compensation**

25. The Tenant was required to pay the Landlord \$1,650.31 in daily compensation for use and occupation of the rental unit for the period from June 19, 2022 to September 28, 2022.
26. Based on the Monthly rent, the daily compensation is \$16.34. This amount is calculated as follows: \$497.00 x 12, divided by 365 days.
27. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
28. There is no last month's rent deposit.

### **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 November 15, 2022.
2. If the unit is not vacated on or before November 15, 2022, then starting November 16, 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 November 16, 2022.
4. The Tenant shall pay to the Landlord \$1,650.31, which represents compensation for the use of the unit from June 19, 2022 to September 28, 2022.
5. The Tenant shall also pay the Landlord compensation of \$16.34 per day for the use of the unit starting September 29, 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 \$1,836.31. The Landlord must deduct any payments made by the Tenant after the hearing of September 28, 2022.
8. If the Tenant does not pay the Landlord the full amount owing on or before November 15, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 16, 2022 at 4.00% annually on the balance outstanding.

**November 4, 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 May 16, 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.