



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

Citation: Cornerstone v Jennifer, 2022 ONLTB 10252

Date: 2022-11-02

File Number: LTB-L-031195-22

In the matter of: 202, 121 SIMCOE ST S
OSHAWA ON L1H4G7

Between: Cornerstone Landlord

And

Jennifer Barras Tenant

Cornerstone (the 'Landlord') applied for an order to terminate the tenancy and evict Barras Jennifer (the 'Tenant') because:

- 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 26, 2022.

The Landlord's Agent, Christine McGee, attended the hearing. Amy Barclay (AB) and Ronny Diaz (RD) appeared as witnesses for the Landlord.

As of 9:35 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 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 November 13, 2022.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N7 Notice of Termination

3. On June 1, 2022, the Landlord gave the Tenant a valid N7 notice of termination with a termination date of June 13, 2022. The notice of termination contains the following allegations:

On May 31, 2022 at approximately 9:00 a.m., the Tenant aggressively approached the maintenance supervisor while he was at his truck in the parking lot of the residential complex yelling "hey fat man, police told me to spray your truck." The Tenant proceeded to spray the truck with lighter fluid. The Tenant then turned toward the maintenance supervisor and sprayed him with the same fluid. The Tenant verbally threatened to "light everyone involved on fire."

Serious Impairment of Safety

4. The N7 Notice was given to the Tenant under section 66 of the *Residential Tenancies Act, 2006* (the 'Act'), which states:

- 5.

66 (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.

6. In order to be successful on this ground, the Landlord must establish that the effect of the Tenant's actions threaten, or has threatened, the well-being or physical integrity of another person to such a degree that termination of the tenancy is reasonable in order to ensure the safety of others.

Landlord's evidence

Testimony of RD

7. RD testified that he has been employed by the Landlord for three years as the maintenance supervisor.
8. RD testified that on May 31, 2022 at approximately 9:00 a.m., he was in the parking lot of the residential complex when the Tenant approached him. He testified that the Tenant was motioning aggressively towards him, and a member of the Landlord's staff stepped in attempting to de-escalate the situation. He stated that the police were contacted.
9. RD testified that while the Landlord's staff were talking to the Tenant in the parking lot, the Tenant yelled a derogatory comment at him. He testified that she then walked towards his truck and sprayed it with lighter fluid. He further testified that the Tenant then sprayed him with the same liquid.

10. RD testified that the Tenant's aggressive behaviour is ongoing. He testified that he witnessed the Tenant spit on another resident of the building and stated the Tenant continues to harass him with racist and derogatory slurs.
11. RD testified that the effects of the Tenant's behaviour have caused him to feel unsafe while at his job and he is fearful the Tenant will attack him again.
12. The Landlord's Agent submitted photographs and videos of the incident as evidence. In this documentary evidence, the Tenant can be seen acting aggressively towards RD and can be seen spraying a liquid on his vehicle and on his person.

Testimony of AB

13. AB testified that she is employed by the Landlord as the Housing 1st Case Manager and works with the tenants providing support.
14. AB testified that the Tenant was having issues at another building operated by the Landlord therefore she was transferred to her rental unit and that the transfer took place on March 3, 2022. She testified that the Tenant has counsellor supports in place but refuses to attend as her appointments.
15. AB testified that she meets with the Tenant on a weekly basis to support her with daily activities and hobbies. She testified that the Tenant acknowledges that her behaviour is inappropriate but blames others for her actions. She stated that the Tenant refuses to identify that she may have mental health issues and blames it on stress and anxiety. She further testified the Tenant refuses any other supports offered to her and is uncooperative.
16. AB testified that the Landlord is currently seeking other housing options for the Tenant as the other residents are negatively impacted by her behaviour and this behaviour is causing a stressful environment for staff and the residents.

Section 83 considerations

17. The Landlord is seeking termination of the tenancy.
18. It is the Landlord's evidence that the issues with the Tenant have continued since the service of the N7 Notice and that the other tenants in the building are concerned for their safety because of the level of aggression involved. On August 22, 2022, the Tenant was throwing dishes into the hallway, spitting on other tenants, and yelling racial slurs. The police have attended at the residential complex on more than one occasion.
19. As the Tenant did not attend the hearing and no evidence of hardship or any other section 83 considerations have been presented for my consideration by the Tenant, I am unable to determine whether or not termination of the tenancy should be delayed or denied.
20. The Act is remedial legislation and the courts have determined that evicting a tenant is a remedy of last resort. In the cases of *Sutherland v. Lamontagne*, [2008] O.J. No. 5763 (Div. Ct.) and *Paderewski Society v. Ficyk*, [1998], the Divisional Court stated, "to put somebody

out of their home must, in my view, call for clear and compelling circumstances that it's no longer possible for the arrangement to continue.”

21. The termination of a tenancy is a remedy of last resort and relief should be granted where the tenancy can be saved without overly prejudicing a landlord's interests. I am not convinced that this is a situation in which conditions regarding the Tenant's conduct can address the rights of the Landlord. The Tenant's behaviour is ongoing, and she has declined all offers of support by the Landlord's staff. Based on the evidence before me and on a balance of probabilities, I am satisfied that the Landlord has met their burden of proof and the Tenant has seriously impaired the safety of another person.
22. 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.
23. This order contains all the reasons for the decision. No other reasons will be issued.

Daily Compensation

24. Based on the monthly rent, the daily compensation is \$4.77. This amount is calculated as follows: \$145.00 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. 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 13, 2022.
2. If the unit is not vacated on or before November 13, 2022, then starting November 14, 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 14, 2022. **The Sheriff is requested to expedite the enforcement of this order.**
4. The Tenant shall pay to the Landlord \$4.77 per day for compensation for the use of the unit starting November 3, 2022 to the date the Tenant moves out of the unit.
5. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
6. If the Tenant does not pay the Landlord the full amount owing on or before November 13, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 14, 2022 at 4.00% annually on the balance outstanding.

November 2, 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 14, 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.

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