



**Order under Sections 66 and 69  
Residential Tenancies Act, 2006**

**Citation:** Odell Jalna Residences of London v Abbiw, 2022 ONLTB 9378

**Date:** 2022-10-27

**File Number:** LTB-L-031549-22

**In the matter of:** 706, 235 GREY ST  
LONDON ON N6B3R1

**Between:** Odell Jalna Residences of London Landlord

**And**

Kofi Abbiw Tenant

Odell Jalna Residences of London (the 'Landlord') applied for an order to terminate the tenancy and evict Kofi Abbiw (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 September 26, 2022.

The Landlord's Legal Representative, Patty Duwyn, attended the hearing. Laura Legros (LL) and Archie Antone (AA) attended the hearing as witnesses for the Landlord.

As of 1:24 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 November 7, 2022.

2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The Landlord is withdrawing their allegation of wilful damage as claimed in the application.

### Background

4. The residential complex is a nine-storey building comprised of 60 rental units. The Landlord is a non-profit housing provider and offers affordable housing for low income residents. The residents are seniors, families, and single persons.

### N5 Notice of Termination

5. On May 19, 2022, the Landlord gave the Tenant a valid N5 notice of termination ('N5 Notice') deemed served on May 24, 2022 with a termination date of June 15, 2022.
6. The Landlord alleges that the Tenant, an occupant of the rental unit, or a person the Tenant has permitted in the residential complex has interfered with the reasonable enjoyment or lawful right, privilege, or interest of the Landlord or another tenant by allegedly engaging in a variety of conduct causing disturbances and excessive noise in the hallway outside the rental unit.
7. On an N5 Notice, a tenant is afforded the opportunity to void the notice by correcting the offensive behaviour or stopping the activity with seven days of being served with the N5 Notice. In this particular case, the voiding period was from May 25 to May 31, 2022, inclusive. The Landlord alleges that the Tenant did not void the N5 Notice within the seven-day period permitted by subsection 64(3) of the *Residential Tenancies Act, 2006* (the 'Act').

### Landlord's evidence

#### Testimony of LL – witness for the Landlord

8. LL testified that she has lived in the residential complex since October 2006 and lives next door to the Tenant. She testified that she complained to the Landlord many times with respect to the conduct of the Tenant's girlfriend who consistently bangs on the Tenant's door and yells and screams profanities wanting the Tenant to let her into the unit.
9. LL testified that these incidents occurred during the months of October, November, December 2021, January, February, March, April, and May 2022. She testified that the Tenant's guest could be heard each time screaming for the Tenant to let her into the unit. She further testified that these occurrences continued on May 25, 26, 27, 28, 29, 31, 2022 where she heard the Tenant's guest in the hallway screaming and kicking at the rental unit door. She added that on June 1 and 2, 2022, the Tenant could be heard stomping and banging in his unit during the early hours of the morning.
10. The Landlord's Legal Representative submitted an audio recording dated August 6, 2022 in which the Tenant's guest can be heard screaming and yelling obscenities at the Tenant's door.

11. LL testified that due to the constant disturbances and noise caused by the Tenant's guest, her anxiety has been heightened, she is suffering with stress, and she has been unable to sleep. She testified that the Tenant's guest has threatened her which has caused her to take extra safety measures while entering and exiting her unit.

## Analysis

12. I accept the uncontested evidence of LL and find that the ongoing disturbances and excessive noise significantly disrupts her daily living. I also find the ongoing noise which occurs during the day and in the early hours of the morning on a frequent basis has substantially interfered with the ability of LL to obtain proper sleep. As a result, I find the Tenant has not voided the N5 Notice and has substantially interfered with another tenant's reasonable enjoyment of the residential complex.

## N7 Notice of Termination

13. On May 19, 2022, the Landlord gave the Tenant a valid N7 Notice of Termination ('N7 Notice') deemed served on May 24, 2022 with a termination date of June 15, 2022.
14. The Landlord alleges the Tenant continually disposes large amounts of garbage and debris in the hallway outside the Tenant's rental unit, adjacent to the stairwell door on the 7<sup>th</sup> floor. The Landlord also alleges the Tenant, an occupant of the rental unit, or someone the Tenant has permitted in the residential complex has improperly disposed of cigarettes butts in the hallway outside the Tenant's rental unit. Further, it is alleged these are a fire hazard.

### Testimony of LL

15. LL testified that on October 30, 2021 at approximately 7:00 pm., the fire alarm sounded in the building. She testified that she attempted to leave the building via the 7<sup>th</sup> floor stairwell, but her way was impeded by the large amounts of garbage and debris left by the Tenant near the stairwell door. She further testified that she filed a complaint with the London Fire Department as a result of this incident.
16. The Landlord's Legal Representative submitted an Inspection Order from the London Fire Department in which it was determined that the Tenant's conduct of placing items, furniture, and/or other debris in the hallway outside his unit and stairwell constitutes a violation of section 2.4.1.1(2) of O. Reg. 213/07: Fire Code under the *Fire Protection and Prevention Act, 1997* which states:

Combustible materials shall not be accumulated in any part of an elevator shaft, ventilation shaft, means of egress, service room or service space, unless the location, room or space is designed for those materials.

### Testimony of AA – witness for the Landlord

17. AA testified that he is employed by the Landlord as the superintendent. He testified that he is familiar with the Tenant and has seen furniture, garbage, and debris in the hallway near the Tenant's door. He testified that he usually removes the items left in the hallway. AA

also testified that the Tenant has acknowledged that he leaves discarded items in the hallway but has shown no remorse or desire to stop the behaviour.

18. The Landlord's Legal Representative submitted a series of photographs as evidence which show discarded furniture, garbage, and debris in the hallway outside the Tenant's unit blocking the stairwell.

### **Analysis**

19. Based on the uncontested evidence and testimony of LL and AA, I am satisfied that the Tenant has left his discarded furniture, garbage, and debris in the hallway outside his rental unit impeding a safe passage of other persons to the stairwell. I am also satisfied that such actions are in breach of the *Fire Protection and Prevention Act, 2006* and therefore find that the Tenant has seriously impaired the safety of another person in the residential complex.

### **Relief from eviction**

20. 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.
21. As the Tenant did not attend the hearing, I am unaware of any circumstances that would cause consideration as to whether or not it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
22. The Landlord is seeking an expedited eviction pursuant to section 84 of the Act. Based on the uncontested evidence before me, I am granting the request for an expedited eviction. I say this because the Tenant has not shown nor taken any responsibility for his actions and the issues are still ongoing.
23. The order requests that the Sheriff expedite enforcement. I am including this request as required by section 84 of the Act as I am issuing this eviction order pursuant to section 66 of the Act. Therefore, the Sheriff can proceed with enforcement of this order.

### **Daily Compensation**

24. The Tenant was required to pay the Landlord \$3,339.52 in daily compensation for use and occupation of the rental unit for the period from June 15, 2022 to September 26, 2022.
25. Based on the Monthly rent, the daily compensation is \$22.72. This amount is calculated as follows:  $\$6.91 \times 12$ , divided by 365 days.
26. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
27. The Landlord collected a rent deposit of \$86.28 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$.76 is owing to the Tenant for the period from January 1, 2022 to September 26, 2022.

28. 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.

**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 7, 2022.
2. If the unit is not vacated on or before November 7, 2022, then starting November 8, 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 8, 2022. The Sheriff is requested to expedite the enforcement of this order.
4. The Tenant shall pay to the Landlord \$3,252.47, which represents compensation for the use of the unit from to September 26, 2022, less the rent deposit and interest the Landlord owes on the rent deposit.
5. The Tenant shall also pay the Landlord compensation of \$22.72 per day for the use of the unit starting September 27, 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 \$3,438.47. The Landlord must deduct from this amount any monies received by the Tenant for rent.
8. If the Tenant does not pay the Landlord the full amount owing on or before November 7, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 8, 2022 at 4.00% annually on the balance outstanding.

**October 27, 2022**

**Date Issued**

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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 8, 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.