



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

Citation: 437172 Ontario Ltd v Purdy, 2022 ONLTB 8478

Date: 2022-10-26

File Number: LTB-L-003255-22

In the matter of: 13, 16 BRANT AVE
GUELPH ON N1E1E7

Between: 437172 Ontario Ltd Landlords
Chester Juchnik

And

Walter Purdy Tenants
Wendy McConnell

2022 ONLTB 8478 (CanLII)

437172 Ontario Ltd and Chester Juchnik (the 'Landlords') applied for an order to terminate the tenancy and evict Walter Purdy and Wendy McConnell (the 'Tenants') because:

- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlords or another tenant;
- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully or negligently caused damage to the premises.

The Landlords also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on October 3, 2022.

Only the Landlords Chester Juchnik and the Landlords' Legal Representative Laura Florence attended the hearing. The Landlords testified on their own behalf and the Landlords called the superintendent Rob Tomlinson and Luke Neill as witnesses.

As of 11:18 a.m., the Tenants were 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. Since the Tenants did not attend and the Landlords were prepared to proceed, the matter proceeded by way of an uncontested hearing pursuant to section 7 of the *Statutory Powers Procedure Act*, R.S.O. 1990.

Determinations:

1. As explained below, the Landlords have 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 effective November 6, 2022.
2. The Tenants were in possession of the rental unit on the date the application was filed.

N5 Notice of Termination

3. On October 28, 2021 the Landlords gave the Tenants a first, voidable N5 Notice Termination alleging the following:
 - On October 18, 2021 the superintendent was collecting beer bottles for recycling when the Tenants brought out some bottles. The superintendent noted they contained a number of cockroaches and immediately informed the Landlords.
 - On October 20, 2021 at approximately 4:00 p.m. the superintendent informed the Tenants they would be required to prepare their rental unit for treatment of cockroaches on October 22, 2021.
 - On October 21, 2021, tenants in the unit directly below the Tenants reported cockroaches coming up through the drainpipes in their bathtub and sinks as well as the heating vents.
 - On October 22, 2021, an exterminator attended the rental unit and found it had not been prepared as the cupboards had not been emptied. The Tenants personal belongings were scattered over the unit and there were plates with left over food on them. The exterminator did what he could but noted a good cleaning of the unit is recommended to ensure control of cockroaches.
 - On July 20, 2021, the same exterminator had attended the rental unit for the same issue and the same recommendations were made at that time.
 - The Tenants were advised to clean their rental unit to ensure the control of cockroaches.
 - The Landlords sought \$141.25 for the cost of the exterminator.
4. On a first N5 notice of termination served under section 64 of the *Residential Tenancies Act, 2006* (Act), a tenant has the opportunity to void the notice by correcting the offending behaviour or stopping the activity within seven days of being served with the N5 notice. This time period was October 28, 2021 until November 4, 2021. The Landlords' evidence was on October 28, 2021 the Tenants undertook to properly clean the rental unit. The Landlords also did not pursue the \$141.25 indicated on the N5 Notice. There was no further evidence of the circumstances up to November 4, 2021, therefore the Tenants voided the first N5 Notice.

5. Pursuant to section 68 of the Act, the Landlords were allowed to give the Tenants a second, non-voidable N5 notice of termination.
6. On November 30, 2021, the Landlords gave the Tenants a second N5 Notice of Termination. The notice of termination contains the following allegations:
 - On November 26, 2021, the Landlords attended the rental unit to conduct an inspection on the cleanliness of the unit and found the rental unit was covered in garbage and refuse. Plates with food on them were all over the counter tops, tables and stove. The floors had garbage and beer bottles littered throughout.
 - The Tenants failed to keep their undertaking to the Landlords as promised.
 - The rental unit is filthy and in a state to attract cockroaches and other insects as it previously had.
 - The Tenants are interfering with the reasonable enjoyment of other tenants.
 - The Tenants are damaging the rental unit by not taking care of their personal cleanliness in the unit, therefore causing it to be in a state of filth requiring renovation in order to repair the unit to a state fit for habitation.
7. The Landlords' evidence was that he attended the rental unit on November 26, 2021 and found it in the same state it had been in October 2021 when the Tenants promised to clean it. He testified he observed cockroaches while in the rental unit but that the Tenants had not complained about them. The Landlords' evidence was the unit below the Tenants' rental unit continued to have cockroach problems.
8. The Landlords' witness, Lucas Neill is employed by Abell Pest Control as a license pest management technician. He testified he provided a checklist to the Landlords in advance of the treatments detailing the preparation required to effectively treat for cockroaches.
9. His evidence was he has twice treated the rental unit. Once on July 20, 2021 and again on October 22, 2021. His evidence was the unit was not prepared as there was food debris and cat litter in the kitchen. There were boxes and debris everywhere making an effective treatment for cockroaches impossible.
10. Mr. Neill testified a good cleaning of the rental unit was required given its condition. He described a moderate infestation in which he observed approximately 20-25 cockroaches on October 22, 2021.
11. The Landlords submitted evidence that on April 28, 2022, another treatment for cockroaches was attempted on the rental unit noting a thorough cleaning of the rental unit was required.
12. On the uncontested evidence presented by the Landlords, I am satisfied on a balance of probabilities the Tenants inaction and lack of cleanliness is perpetuating the cockroach problem at the residential complex. I find this substantially interferes with the reasonable enjoyment and lawful right, privilege or interest of the Landlords and other tenants.

13. I am not satisfied the Tenants have wilfully or negligently caused damage to the premises. No evidence was presented in relation to damage and this aspect of the application will be dismissed.

Section 83 Considerations

14. 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. The Tenants did not attend the hearing to present any evidence or submissions in support of granting relief from eviction. I asked the Landlord if they were aware of any circumstances the Tenants may be experiencing that would make eviction unfair and they were aware of none. I further find the ongoing conditions of the rental unit are having a negative impact on the Landlord in their relations with other tenants at the residential complex.

Daily Compensation

15. The Tenants were required to pay the Landlords \$7,990.62 in daily compensation for use and occupation of the rental unit for the period from January 31, 2022 to October 3, 2022.
16. Based on the Monthly rent, the daily compensation is \$32.48. This amount is calculated as follows: \$988.00 x 12, divided by 365 days.
17. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
18. The Landlords collected a rent deposit of \$875.00 from the Tenants and this deposit is still being held by the Landlords. Interest on the rent deposit, in the amount of \$136.76 is owing to the Tenants for the period from July 26, 2012 to October 3, 2022.
19. 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 Landlords and the Tenants is terminated. The Tenants must move out of the rental unit on or before November 6, 2022.
2. If the unit is not vacated on or before November 6, 2022, then starting November 7, 2022, the Landlords 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 Landlords on or after November 7, 2022.
4. The Tenants shall pay to the Landlords \$6,978.86, which represents compensation for the use of the unit from January 31, 2022 to October 3, 2022, less the rent deposit and interest the Landlords owes on the rent deposit.
5. The Tenants shall also pay the Landlords compensation of \$32.48 per day for the use of the unit starting October 4, 2022 until the date the Tenants moves out of the unit.

6. The Tenants shall also pay to the Landlords \$186.00 for the cost of filing the application.
7. The total amount the Tenants owe the Landlords is \$7,164.86.
8. If the Tenants do not pay the Landlords the full amount owing on or before November 6, 2022, the Tenants will start to owe interest. This will be simple interest calculated from November 7, 2022 at 4.00% annually on the balance outstanding.

October 26, 2022
Date Issued

John Cashmore
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 Tenants expires on May 7, 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.