



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

Citation: OSGOODE NON-PROFIT HOUSING CORP v NTUMBA, 2022 ONLTB 8457

Date: 2022-10-26

File Number: LTB-L-051127-22

In the matter of: A, 1360 Meadow Drive
Greely ON K4P1N3

Between: Osgoode Non-Profit Housing Corp Landlord

And

Laetitia Ntumba Tenant

Osgood Non-Profit Housing Corp. (the 'Landlord') applied for an order to terminate the tenancy and evict Laetitia Ntumba (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 October 3, 2022.

Only the Landlord's Agent Jodie Anderson attended the hearing.

As of 10:22 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. Since the Tenant did not attend and the Landlord was 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 Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated on November 6, 2022.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On March 8, 2022, the Landlord gave the Tenant a first, voidable N5 notice of termination. The Notice was mailed on March 8, 2022 and deemed served on March 13, 2022. The N5 Notice alleges an incident on March 2, 2022 in which the Tenant was involved in a loud, violent altercation with her partner in which the police were called. The incident took place

at 4:00 a.m., disturbing the other tenants in the residential complex. The Notice advises the Tenant that in order to avoid eviction, excessive noise that interferes with the reasonable enjoyment of other tenants must stop. The Notice also references the marijuana smoke entering other rental units but does not provide any dates or times of any alleged incidents.

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. The voiding period was from March 13, 2022 until March 20, 2022. The Landlord's evidence was a new complaint was received on March 28, 2022 leading me to believe the 1st N5 Notice had been voided.
5. Pursuant to section 68 of the Act, the Landlord was allowed to give the Tenant a second, non-voidable N5 notice of termination.
6. On April 1, 2022 the Landlord mailed to the Tenant a second N5 Notice of Termination, deemed served on April 6, 2022. The notice of termination contains the following allegations:
 - On March 28, 2022, the Landlord received a written complaint from the neighbours alleging the continued smoking of marijuana in the rental unit.
 - That the Tenant continues to cause excessive noise by playing loud music, slamming doors, yelling and stomping feet.
 - The incidents occurred on March 6,7,8,9,10,12,13,14,15,16,17,18,19,22,24, 25, 26 and 27, 2022.
 - The neighbours are suffering from a lack of sleep from the near constant excessive noise and have been physically ill from the marijuana smoke.
7. At the hearing, only the Landlord's Agent testified. Her evidence was the rental unit is in a non smoking building.
8. The Landlord's Agent testified that on March 28, 2022 she received fresh complaints from the other tenants on March 28, 2022. The Landlord was advised the Tenant continued to smoke in the rental unit. They were also advised there was continued loud noise caused by slamming doors, yelling, stomping feet and fighting. The complaint received by the Landlord's Agent provided several dates this behaviour occurred after the voiding period of the first N5 Notice and until the second N5 Notice was served.
9. The Landlord's Agent also testified the impact on the other tenants was a loss of sleep and illness caused by the smoke entering their unit. Her evidence was the neighbouring tenants attempted to discuss the issue with the Tenant but were threatened and do not feel safe discussing it further with the Tenant.
10. The Landlord's Agent testified the issues with the Tenant are ongoing to the date of the hearing and she continues to receive complaints from the other tenants.

11. On the uncontested evidence before the Board, I am satisfied on the balance of probabilities, the Tenant has been smoking in the rental unit contrary to the rules of the property. I am also satisfied the Tenant has continuously disturbed the other tenants at the residential complex by making excessive noise. As a result, I find that this behaviour has substantially interfered with the reasonable enjoyment and lawful right, privilege or interest of the Landlord and other tenants.

Section 83 Considerations

12. 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 section 83(1) of the Act. The Tenant did not attend the hearing to present any evidence or submissions in support of granting relief from eviction. Additionally, I asked the Landlord if they were aware of any circumstance the Tenant may be experiencing that would make eviction unfair and they were aware of none.

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 6, 2022.
2. If the unit is not vacated on or before November 6, 2022, then starting November 7, 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 7, 2022.

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 Tenant 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