



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

**Citation:** BATHURST- VAUGHAN MALL LIMITED C.O.B ST. CLAIR PLACE v O'handley, 2022  
ONLTB 9476

**Date:** 2022-10-19

**File Number:** LTB-L-001906-22

**In the matter of:** 308, 21 VAUGHAN RD  
TORONTO ON M6G2N2

**Between:** BATHURST- VAUGHAN MALL LIMITED C.O.B ST. CLAIR PLACE Landlord

**And**

Daniel Patrick O'handley Tenant

BATHURST- VAUGHAN MALL LIMITED C.O.B ST. CLAIR PLACE (the 'Landlord') applied for an order to terminate the tenancy and evict Daniel Patrick O'handley (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 September 2, 2022.

Only the Landlord's Legal Representative David Ciobotaru and the Landlord's Agent Mary Clappa attended the hearing.

As of 10:00 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. The Tenancy shall continue subject to the conditions set out in the order below.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On November 29, 2021, the Landlord gave the Tenant an N5 notice of termination. The notice of termination alleges that you were growing a garden directly on the balcony floor of your unit.

4. The Tenant did not stop the conduct or activity within seven days after receiving the N5 notice of termination. The Landlord inspected the unit on December 9, 2021 to determine if the garden had been removed and found that it had not been. Therefore, the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).
5. The Landlord testified that they had received an engineering report stating that the garden posed a danger to the building envelope that might cause water infiltration and that the balcony was not designed for heavy weight such as a garden, particularly in winter with water retention and freezing.
6. The Landlord also testified that the garden created an unsafe condition in that the building code requires 43 inches from floor to top of balcony, and that with the garden this was reduced to 37.5 inches when standing on the soil.
7. The Landlord also testified that pigeons were also nesting on the balcony, resulting in feces on the balcony that were not being cleaned by the Tenant. The Landlords Contractor Terminix Canada noted that the balcony is “obstructed with lots of mess, unhealthy amounts of garbage covered in feces, dirt, rocks, furniture, etc”.
8. The Landlord also testified on their efforts to work with the Tenant to encourage him to remove the garden and to clean the balcony. However, months of trying with no success, they finally commenced this application.
9. The Landlord indicated a willingness to afford the Tenant one final opportunity to removed the garden.
10. 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 not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
  - a. The Tenant shall remove the garden and all materials that make up the garden, that is the soil, and retaining walls. This must be completed on or before November 18, 2022.
  - b. For a period of 12 months the Tenant shall ensure the balcony is kept in a clean and sanitary condition, in particular in a manner that prevents pigeons from nesting and keeps it free of garbage.
  - c. The Tenant shall cooperate with the Landlord’s inspections with appropriate notice. In particular, the Tenant shall not unreasonably refuse the Landlord’s entry for the purpose of inspecting the balcony for the next 12 months.

2. If the Tenant fails to comply with the conditions set out in paragraph 1 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.
3. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
4. If the Tenant does not pay the Landlord the full amount owing on or before October 30, 2022, the Tenant will start to owe interest. This will be simple interest calculated from October 31, 2022 at 4.00% annually on the balance outstanding.

**October 19, 2022**  
**Date Issued**

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Robert Patchett  
Vice Chair, 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 April 30, 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.