



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

Citation: Albrecht v Vernon, 2024 ONLTB 29087

Date: 2024-04-24

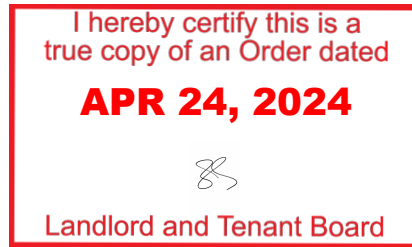
File Number: LTB-L-094455-23

In the matter of: 166 ELM AVE N
LISTOWEL ON N4W3E7

Between: Raymond Albrecht

And

Nikole Vernon



Landlord

Tenant

Raymond Albrecht (the 'Landlord') applied for an order to terminate the tenancy and evict Nikole Vernon (the 'Tenant') because:

- the Tenant or another occupant of the rental unit has committed an illegal act or has carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential complex involving the production of an illegal drug, the trafficking in an illegal drug or the possession of an illegal drug for the purposes of trafficking.

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 April 15, 2024.

The Landlord Raymond Albrecht, the Landlord's Legal Representative Robert Fex, the Tenant and the Tenant's Legal Representative Aron Ban De Kleut attended the hearing.

Determinations:

1. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the Landlord's application is dismissed.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On December 5, 2023, the Landlord served the Tenant an N6 notice of termination with a termination date of December 18, 2023. The notice was served under section 61 of the *Residential Tenancies Act, 2006* (the Act) which states:

A landlord may give a tenant notice of termination of the tenancy if the tenant or another occupant of the rental unit commits an illegal act or carries on an illegal trade, business or occupation or permits a person to do so in the rental unit or the residential complex.

4. The specific allegations on the N6 notice are:
 - a) On June 20, 2023 at around 6:00 a.m. the O.P.P. executed a search warrant at 166 Elm Avenue North, Listowel, Ontario.
 - b) During the search warrant the police seized a quantity of fentanyl, methamphetamine, cocaine and hydromorphone with an approximate value of \$10,570.00 as well as Canadian currency and offence related property.
 - c) The Tenant was charged with Possession of a Schedule I Substance for the purpose of trafficking methamphetamine, hydromorphone, oxycodone and fentanyl.
5. At the hearing, the Landlord chose to proceed by submitting only documentary evidence. The Landlord's Legal Representative confirmed they were not calling any witnesses.
6. The Landlord submitted two newspaper articles into evidence. One is from the Beacon Herald and the other is from Midwestern Newspapers. The articles describe the execution of the search warrant and the drugs seized. The articles state the Tenant and another person were charged with possession of the listed drugs for the purposes of trafficking.
7. The Landlord submitted screen shots from a local community Facebook group discussing the arrests. All of the names of those posting commentary are redacted. The discussion surrounds the impact of drugs in the community.
8. The Landlord also submitted an affidavit from Barry Cookson, a Sergeant with the O.P.P. The affidavit states the attached information is true and accurate to the best of Sergeant Cookson's knowledge. The attached information referenced in the affidavit are copies of the newspaper articles the Landlord submitted into evidence.
9. I asked the Landlord's Legal Representative why Sergeant Cookson was not present to testify. Mr. Fex responded that he did not know if Sergeant Cookson was working and that the Landlord chose to proceed with documentary evidence only to save time and money.
10. Mr. Fex confirmed Sergeant Cookson was not summoned to attend the hearing.
11. At the close of the Landlord's case, I again confirmed with Mr. Fex that no witnesses were being called to provide testimony.
12. The Tenant testified that she is an addict. Her evidence was she had been in rehab and was sober for 13 years before relapsing in January of 2023.
13. The Tenant acknowledged being arrested on June 20, 2023 and charged with the offences claimed on the N6 notice. She stated she was charged with drug trafficking offenses because of the quantity of drugs she was found to have in her possession. The Tenant explained the drugs were for her own personal use and that she had these significant quantities because she had purchased approximately one month's supply.
14. The Tenant testified she does not sell drugs and is currently attending a program once per week to help with her addiction issues.
15. During cross examination, the Tenant restated she was not selling drugs. She also stated she was not convicted of drug trafficking offences. The Tenant reaffirmed the drugs she had in her possession on June 20, 2023 were for her own personal use.

16. During cross examination the Tenant was asked how such an amount of drugs could be for personal use and she replied that they were not being consumed in one day. She stated she does not use drugs in the rental unit but stores them there in a locked drawer.
17. The Landlord's Legal Representative asked the Tenant if the drugs were for someone else and suggested the Tenant had testified to this earlier in the hearing. The Tenant stated she had not said this. I did not hear the Tenant testify that any of the drugs in her possession for were anyone else. I listened to the hearing recording before writing this order and confirmed the Tenant did not state this.

Analysis

18. This is the Landlord's application and it is their burden to prove the allegations on a balance of probabilities.
19. The Landlord chose to rely entirely on documentary evidence to support their application. The Tenant cannot cross examine documents and test the information contained in them. In this case, the Landlord proceeded in a manner that left the Tenant completely unable to challenge or test the evidence of the Landlord.
20. All of the evidence submitted by the Landlord amounts to hearsay evidence. The Court of Appeal in *R. v. Badgerow*, 2014 ONCA 272 (CanLII) explains that although a universal definition of hearsay evidence is elusive, hearsay is often identified by its characteristics: (a) it is adduced for the truth of its contents; and (b) there is an absence of a contemporaneous opportunity to cross-examine the declarant.
21. The Landlord relied on documents authored by people who did not attend the hearing to testify and subject themselves to cross examination. Subsection 15(1) of the *Statutory Powers Procedures Act, 1990* permits admission of unsworn hearsay testimony and allows the Board Member to assign it the appropriate probative weight.
22. The Divisional Court's decision in *Manikam v. Toronto Community Housing Corporation*, [2019 ONSC 2083 \(CanLII\)](#) discusses the dangers of hearsay evidence at paragraphs 29-36. Generally, hearsay should be admitted if it is necessary and reliable.
23. In this case, I find the Facebook postings completely unreliable and of no value. They are all unnamed postings that provide no evidence related to the incident on June 20, 2023. None of the commentary amounts to any evidence the Tenant was trafficking drugs from the rental unit. For these reasons, I gave this evidence no weight at all.
24. Sergeant Cookson did not attend the hearing to testify. Mr. Fex stated he did not know if Sergeant Cookson was working on the day of the hearing and that no summons was sought to have him attend the hearing. Mr. Fex stated the Landlord chose to proceed in the manner they did to save time and money. Based on these submissions, I was not satisfied the Landlord has shown it was necessary to rely on the affidavit from Sergeant Cookson. For these reasons, I gave the affidavit and the newspaper articles virtually no weight.
25. In this case, the only person that testified was the Tenant. She denied selling or trafficking drugs from the rental unit. She explained why she had such a large amount of drugs in her possession. Most importantly, the Tenant subjected herself to cross examination and the

Landlord had the opportunity to challenge and test her evidence. The Tenant's evidence was not shaken under cross examination. Her evidence was given in a clear and candid manner and I found her believable.

26. I find that to assign the Landlord's hearsay evidence the same evidentiary value as the Tenant's direct testimony without allowing the Tenant any means of cross-examining Sergeant Cookson about his knowledge of this case, would be unduly prejudicial under the circumstances. Since the Tenant was the only one to provide direct firsthand evidence and was subject to cross examination, I find her evidence deserves far more weight than the hearsay evidence of the Landlord.

27. As a result, I prefer the more reliable direct testimony of the Tenant and find it most likely the Tenant was not trafficking illegal drugs from the rental unit on June 20, 2023. As stated earlier, this is the Landlord's application and they must prove what they claim on a balance of probabilities. For the reasons stated above, I find they have failed to do so and the application is therefore dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

April 24, 2024
Date Issued



John Cashmore
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.