



Oct 22, 2024

Landlord and Tenant Board

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

Citation: Palka v Williams, 2024 ONLTB 78906

Date: 2024-10-22

File Number: LTB-L-017853-24

In the matter of: 43 OTTAWA ST N
HAMILTON ON L8H3Y8

Between: Sabina Palka Landlord

And

Matthew Williams Tenant
Cassandra Musgrave

Sabina Palka (the 'Landlord') applied for an order to terminate the tenancy and evict Matthew Williams and Cassandra Musgrave (the 'Tenant') because:

- 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 Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully caused undue damage to the premises.

This application was heard by videoconference on October 3, 2024.

The Landlord and her Witness Mr. Sadowski and the Tenant attended the hearing. The Tenant was represented by Mr. Kurt Shmuir and the Landlord was represented by Mr. Jordan Nieuwhof.

It is determined that:

1. The Tenant has been living in the unit since 2014.
2. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and/or the claim for compensation in the application.

3. However, I will be providing relief from eviction, subject to the conditions stated herein.
4. The Tenant was in possession of the rental unit on the date the application was filed.

N7 Notice of Termination

On February 28, 2024, the Landlord gave the Tenant an N7 notice of termination deemed served on the same date. The notice of termination contains the following allegations:

- (i) The Tenants disposed of and/or sold for profit the Landlord's 2019 GE washer and dryer, and replaced them with 20 year old appliances;
- (ii) The Tenants removed one smoke and carbon monoxide detector, and disabled another, thereby violating the fire code;
- (iii) Trespassed into the utility room, by cutting the padlock;
- (iv) The dining room window was broken;
- (v) The Tenant tampered with or cut electrical wires throughout the premises but specifically in the attic.

Serious Impairment of Safety

Smoke Detector Removal/ Tampering

5. The Tenant or another occupant of the rental unit or a person permitted in the residential complex by the Tenant has seriously impaired or seriously impairs the safety of all those in the rental unit by tampering with a smoke detector and removing a smoke detector. This conduct occurred in the residential complex.
6. On February 23, 2024, the Landlord attended the unit for an inspection. The Landlord noted the smoke detector in the basement was missing and the smoke detector outside the bedroom on the upper floor was disabled. When he removed the detector from upstairs, there was damage to the rear of it. The Landlord provided a photo of the damaged smoke detector taken from upstairs.
7. The Landlord testified that the Tenant did not make a maintenance request for the smoke detector, prior to the N7 notice.
8. The Landlord provided a photo of the empty bracket where the smoke detector in the basement had been removed.

9. The Landlord claimed that this had happened in the past, and showed a picture of the place where a smoke detector had been removed outside the kitchen in the hallway, which the Landlord then replaced.
10. The Landlord provided a receipt from 2017 for two smoke detectors, which would have been good for 10 years. The cost was \$89.99 + HST each.
11. The Tenant produced emails from July 9 and 10, 2024, where they had written to the Landlord about a smoke detector that malfunctioned by beeping constantly and had to be removed. The email does not mention where the detector was located, but the Tenant testified that it was the one upstairs by the bedroom. And yet, as per the Landlord's evidence, the smoke detector upstairs had been disabled on the rear side, and not totally removed from the ceiling.
12. A subsequent inspection took place on July 11, 2022, with the Landlord attending with the Fire Prevention Office. The attending officer requested replacement of all three smoke alarms.
13. Looking at the evidence as a whole, the Tenants have explained why one of the detectors was removed, but their evidence as to which one was removed was inconsistent with the Landlord's evidence. I prefer the evidence of Mr. Sadowski here, which I found to be detailed and precise. He knew the house well and had been the one servicing it. I found him to be a reliable witness. On the basis of his evidence, I find that one smoke detector was removed from the house. I accept the Tenant's evidence that it had beeped constantly causing them to remove it (on the basis of the Tenant's email from July 2024). One smoke detector was disabled. The Tenant gave no explanation as to why they or someone else disabled the smoke detector, and the denied this. I accept the Landlord's evidence that the alarm had been tampered with and find the Tenant responsible.
14. In my view, disabling a smoke detector does constitute a serious impairment of safety. All of those staying in the rental unit were put at risk. The Tenant has given no plausible explanation for this.
15. Moreover, the alarm in the basement had already been removed by the time of the Landlord's visit on 23 February 2024. This does show that the Tenant had removed more than one alarm. A second alarm had been removed in July 2024, for example.
16. Mr. Nieuwhof referred me to s. 6.3.3.6 of the *Ontario Fire Code* which prohibits the disabling of smoke alarms. Section 6.3.3.5 requires tenants to notify landlords of any non-operational smoke alarms. He also referred me to the case of *Windsor Essex Community Housing Corporation v Prendergast-*

McLellan, 2023 ONLTB 19910 (CanLII), <<https://canlii.ca/t/k3345>>, retrieved on 2024-10-16, where the Member found that the Tenant had been tampering with the smoke detector and ordered eviction:

12. Based on the uncontested evidence before the Board, I find that by tampering with the smoke detector and removing it from the fixture, the Tenant has engaged in conduct that has seriously impaired not only her own but also the safety of others including residents, visitors and staff.

13. The photos of the Landlord showed that the smoke detectors had been tampered with in a way that was not merely accidental. There were wires dangling from the ceiling and appeared to be deliberate. If the smoke detectors had been removed or interfered with on only one occasion, then it could possibly have been accidental. However, the smoke detectors were interfered with in a very deliberate way before the N7 notice of termination was served and after, as well.

14. As such, I do not find that a conditional order would be appropriate under the circumstances as the Tenant's behaviour has not changed or subsided since the service of the N7 notice of termination.

15. The Landlord's request for a termination of the tenancy is granted.

17. Mr. Nieuwhof argued that the Tenants continued to meddle with the smoke detectors after the N7 was issued on February 28, 2024.

18. In my view, the evidence does not go so far.

19. For example, Mr. Shmuir argued:

Given the Smoke Detector that was removed from the property was not functioning as it was designed, the Tenants actions in removing it from the home did not in any way violate the Fire Code, causing serious problems and/or violating the legal interests, rights and/or privileges of the Landlord, creating a safety concern to public health and safety.

20. I agree. The Tenant emailed the Landlord on July 9/10 2024 about the alarm that had been beeping constantly.

21. That led to the visit from the Fire Department on July 11, 2024.

22. This cannot be characterised as continued tampering with the alarms.

23. The alarm was removed because it would not stop beeping.

24. I find the Tenant acted with due dispatch in alerting the Landlord which led to a visit from the fire department.

Electrical Wiring

25. During an inspection of the smoke detector, the Landlord poked his head into the attic on February 26, 2024. He saw that a wire had been cut. When he asked the Tenant about it, the Tenant denied cutting the wire in the attic. It had been left without a capping. It was a fire risk as it unbalanced the circuits in the house.
26. An electrician visited the unit on April 4, 2024 to carry out certain repairs. During the visit, the electrician observed the Tenant dismantling electronics. The Tenant claimed he was knowledgeable about such things. In my view, this does not shed any light on whether the Tenant had anything to do with the loose wire in the attic, as this is not only hearsay, but also constitutes mere speculation.
27. The Landlord claimed that other unauthorised electrical work had been done around the house. An electrical panel had been replaced, for example.
28. The Landlord also argued that a small segment of the wire in the attic had been removed, and that the Tenant might have cut it and sold it off as copper wire is expensive. I find this also to be mere speculation. There was a large spool of wire in the basement, had the Tenant been in the business of selling copper wire, they would obviously have started there.
29. When Mr. Shmuir asked the Landlord whether they contacted the ESA about the exposed wiring right away after discovery, the Landlord noted that it was the Tenant who called the ESA.
30. The Tenant testified that there was rat damage in the attic, and the wire might have been chewed. The Tenant did have an electrician into the unit to do some repairs. The electrician told them that the wire in the attic was a dead wire. They paid the electrician \$1,695 to repair and replace a panel in the basement. The ESA was threatening to cut off their power supply if repairs were not done. The Tenant got the ESA involved because the Landlord was not dealing with the issues. Their electrician came on August 12, 2024. They had reported the wire issue in February 2024 to the Landlord.
31. In my view, this does not constitute serious impairment of safety as the wire in question was a dead wire. There was no evidence at all that it was a live wire. Moreover, the Landlord left it to the Tenant to complain to the ESA, which suggested a dereliction of their duty.

Undue Damage

Washer and Dryer

32. The Tenant or an occupant of the rental unit or a person permitted in the residential complex by the Tenant has wilfully caused undue damage to the rental unit or complex by removing the Landlord's washer and dryer from the premises.
33. On 26 January 2024, Karl Sadowski was at the rental unit carrying out a maintenance request. The Tenant had requested to have the dryer serviced. Mr. Sadowski then noticed that the washer and dryer at the unit, were not those the Landlord had provided. The Landlord had provided GE appliances dating from 2019 – 2020 about 4 years ago. But at the unit, the Landlord saw Kenmore models which were some 20 years old. The Landlord provided photos of the washer and dryer the Tenant had acquired and the dryer he had provided. On February 12, 2024, the Landlord told the Tenant that the washer and dryer were missing.
34. The Tenant had also requested service on the washer, as the Landlord's reply of February 28, 2024, notes that the Tenant requested service on the washer, though the Tenant's email was not in evidence.
35. The Landlord filed a police report on the incident alleging theft. The Landlord believed the Tenants had sold the appliances on a platform used to sell scrap parts.
36. The Landlord testified that prior to January 26, 2024, the Tenant did not raise any issue with either the washer or dryer they had been supplied with.
37. The Tenant admitted by way of email dated February 1, 2024 concerning the washer and dryer that *"they stopped working awhile ago and I found free replacements on Facebook."*
38. The Landlord provided a photo showing the washer and dryer which the Tenant had acquired. The Tenant produced a photo of a Whirlpool washer which looked less than 20 years old. But I do not accept that this was the washer they had acquired. I prefer the Landlord's evidence here, showing a photo with both units the Tenant acquired, in the basement of the unit.
39. The Landlord provided evidence from Home Depot that similar units (which have been slightly updated) cost about \$1,348 for both. But the Landlord paid close to \$1,000 for both from a scratch and dent store.
40. The Tenant testified that they had requested maintenance of the dryer on January 26, 2024 by way of text to the Landlord.

41. When I asked the Tenant what they did with the washer and dryer, Cassandra Musgrave testified that they were kept in the driveway and then scrapped. She claimed they spent \$100 for the replacement washer and \$70 for the dryer. When I asked her why Matt, her partner stated that they were acquired from Facebook for free, and she could not explain this.
42. In my view, the Tenant had no right to dispose of the Landlord's washer and dryer. They had no permission to do so.
43. That being said, I agree with Mr. Shmuir for the Tenant that the removal of the washer and dryer does not constitute undue damage to the unit, nor does it impair the safety of anyone. The N7 Termination Notice is unique in that there is no opportunity to void the Notice, as opposed to an N5, where the notice can be voided. The Tenant could have been served a voidable N5, requiring them to replace the units they had disposed of.
44. I disagree with Mr. Nieuwhof that s. 62(2)(c) of the Act which requires the Tenant to replace or repair damaged property applies here. In the N7, the Tenant had no opportunity to replace the missing equipment as it was not a voidable termination notice under s. 62(2)(c). The notice of termination here for damage to the property was a s. 63 notice of termination which is not voidable.
45. As a result, although the Tenant is liable for the cost of the machines they have replaced, this does not constitute grounds for eviction.

Utility Room

46. The Landlord also testified that the Tenant had broken into the utility room in the basement which had a padlock on it. The Landlord claims that the Tenant did not have access to this part of the house.
47. I have reviewed the lease. As per the lease, the entire house was leased to the Tenant. The utility room was not reserved to the Landlord under the lease.
48. As a result, I find that the Tenant had the right to occupy the utility room.

Broken Window

49. During an inspection of the dining room on 23 February 2024, the Landlord discovered that there was something over the window in the dining room. It looked like a wooden shelf. The Tenant was upset for some reason and so the Landlord did not press the matter. The next day or two days later, the Tenant contacted the Landlord to say that the dining room window had been

smashed. It looked like someone had thrown something at the window violently. There was also damage to the flashing around the window. As two parts of the window had been damaged, it appeared that something had been thrown twice.

50. The Landlord spoke to the Tenant. They claimed a passerby had thrown a bowling ball at the window.
51. The Tenant did file a police report about the incident.
52. The cost to replace the window was \$482.70.
53. The Tenant claimed the police stated that they could not take fingerprints from the bowling ball. The Tenant argued that the area they lived in was on the rough side with a lot of activity. It was not the first time the window had been banged on. They claimed the police took the bowling ball to assess it for evidence. The Tenant did file a police complaint in relation to this incident, as they had done on other occasions, which was in evidence. The flashing was damaged by what would appear to be a round object, as it left a concave indentation in the flashing.
54. The Tenant claimed there were other similar incidents involving people in the community causing damage. Both houses next to the unit have been abandoned. There is a busy park behind the unit. There is a rent geared to income association across the street.
55. The Landlord's suggestion that the window was damaged from a child shooting an air gun out the window is not credible. The damage to the metal flashing was a circular indentation which could not possibly have been caused by an air gun.
56. I find, on a balance of probabilities, that the Landlord has not proven that the Tenant or their guest etc caused the damage to the window. The window was damaged from the outside in, which is consistent with the Tenant's account of what happened.

Daily compensation, NSF charges, rent deposit

The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

57. There is no last month's rent deposit.

Relief from eviction

58. 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.
59. The only impairment of safety in this matter is the smoke detector. However, I have found that the Tenant did notify the Landlord when the device was beeping out of control. This led to a visit from the Fire Department. I find that the N7 Notice did have an effect on the Tenant, causing them to be more vigilant with respect to this. As a result, I will not order eviction for this, but include a condition that any further tampering or removal of the smoke detectors will not be tolerated, and be subject to a s. 78 condition.
60. I have found the wire in question was not a live wire.
61. As to the washer and dryer, I have found that it may be theft, but is not damage to the property and thus I will order a remedy by way of reimbursement for the removed appliances.
62. The utility room is part of the leased premises, and I find no issues there.
63. As for the window, I accept the Tenant's evidence as to how it happened. This then does not merit eviction.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
2. The Tenant shall not, for the duration of the tenancy, tamper with the fire detectors/carbon monoxide detectors, or remove them from the unit. The Tenant shall promptly notify the Landlord, within 24 hours, of any issues with the smoke detectors/ carbon monoxide detectors.
3. The Tenant shall pay the Landlord the cost of the washer and dryer in the amount of \$1,000.00 on or before November 30, 2024.
4. If the Tenant fails to comply with the conditions set out in paragraphs 2 and 3 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.

5. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
6. The total amount the Tenant owes the Landlord is \$1,186.00.
7. If the Tenant does not pay the Landlord the full amount owing on or before November 30, 2024, the Tenant will start to owe interest. This will be simple interest calculated from December 1, 2024 at 6.00% annually on the balance outstanding.

October 22, 2024

Date Issued

James W Campbell

James Campbell

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 April 28, 2025 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.