



**Order under Section 69 / 89
Residential Tenancies Act, 2006**

Citation: 2729907 Ontario Inc. v Pierce, 2024 ONLTB 9887

Date: 2024-05-22

File Number: LTB-L-076549-22

In the matter of: 202, 2 FORSYTH ST
MARMORA ON K0K2M0

Between: 2729907 Ontario Inc.

And

Keith Pierce



Landlord

Tenant

2729907 Ontario Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Keith Pierce (the 'Tenant') because:

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

2729907 Ontario Inc. (the 'Landlord') also applied for an order requiring Keith Pierce (the 'Tenant') to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

This application was heard by videoconference on December 14, 2023.

Only the Landlord's Agent, Leah Doyle, and the Landlord's Legal Representative, Leon Presner, attended the hearing.

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. Therefore, the tenancy is terminated and the Tenant shall compensate the Landlord for any repairs.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N5 Notice of Termination

3. On September 30, 2022, the Landlord gave the Tenant an N5 Notice of Termination deemed served on the same date. The termination date was October 22, 2022. The notice of termination contains the following allegations: damages of \$300.00, to be paid within 7 days and a Schedule A attached outlining what damages were caused.
4. The first N5 correctly identified the rental unit and the Tenant. It was served 22 days prior to the Date of Termination, as required by statute. Further, was correctly identified as being voidable and contained sufficient reasons and details for the Tenant to understand the allegations, relating to hoarding and cleanliness. On this basis, I find that the first N5 served by the Landlord valid.
5. The Tenant did not stop the conduct or activity within seven days after receiving the N5 notice of termination. Therefore, the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).
6. On November 1, 2022, the Landlord gave the Tenant a second N5 Notice of Termination deemed served on the same date. The termination date was November 16, 2022. The notice of termination contains the following allegations: damages of \$700.00, to be paid within 7 days and a Schedule A attached outlining what damages were caused.
7. The second N5 correctly identified the rental unit and the Tenant. It was served 16 days prior to the Date of Termination, as required by statute. Further, was correctly identified as being non-voidable and contained sufficient reasons and details for the Tenant to understand the allegations. I note that the allegations relating to hoarding and cleanliness include new allegations. While the allegations do not provide specific dates, I find, because the allegations relate to ongoing conduct of the Tenant, this is acceptable. On this basis, I find that the second N5 served by the Landlord valid.
8. The L2 application was filed on December 14, 2022. This was within the 30 day statutory requirement set out in subsection 46(1) of the Act. As a second N5 was served, this application will only concern itself with the allegations contained there.

Allegations and Submissions

9. In the second Notice, the Landlord alleges willful damage to the rental unit. The allegations are that, prior to the tenancy, signed July 2020, the Landlord installed new appliances, the unit professionally cleaned and painted, which have now been damaged beyond normal wear and tear.
10. The Landlord alleges that the Tenant does not keep the rental unit in a good state of cleanliness. To wit, the Landlord alleges that there are food crumbs all over the floor that are not cleaned up. The Tenant has a litterbox that emanates strong odors that permeate the unit.
11. The Landlord alleges that the Tenant routinely spills unidentified liquids in the hallways of and the backdoor the residential complex. The Landlord alleges that the hallways of the residential complex have been stained because of this and makes it difficult to clean. The Landlord alleges that Tenant has a dirty mat outside his doorway that is covered in dirt and collects bugs.

12. In summary, the Landlord alleges that the rental unit is extremely unhygienic.
13. At the hearing, the Landlord testified that the issues began right at the beginning of the tenancy. The Landlord testified that, 6 months after the tenancy began, she noted the film of yellow liquid on the appliances. The Landlord testified that there was yellow liquid that would drip off the refrigerator. The Landlord submitted that it was grease, but she couldn't be sure.
14. The Landlord testified that there is cigarette ash on the floor of the rental unit and furballs over all the floor. The Landlord testified that the Tenant spills liquids all over the hall. The Landlord submitted that its beer from the cans that the Tenant takes to refund at the Beer Store.
15. The Landlord testified that the Tenant has a litterbox in the rental unit where strong odors emanate from. The litterbox is for the Tenants cat. The Landlord testified that the tenants in the adjacent units have complained about the smell. The Landlord testified that the cleaners complain about the smell. The Landlord testified that the odors can be detected from outside the unit, all the way at the top of the stairs in the hallway. The Landlord testified that the technicians hired to fumigate the residential complex did not want to attend to the rental unit due to the smell.
16. The Landlord testified that she served the N5 due to complaints from other Tenants in the residential complex. The Landlord testified that she received complaints of weed and beer in the hallways. When she attended the rental unit, the appliances are covered in a coating of unidentified yellow liquid which drips off of.
17. The Landlord testified that she attends the unit on a monthly basis as the Tenant pays his rent by cash. The Landlord testifies that she tells the Tenant each time she visits that he needs to clean the rental unit. The Landlord testified that the Tenant never takes action.
18. The Landlord testified that the kitchen sink began to rot as the Tenant clogged it and left water pooling inside of it. Due to this, the sink began to leak and damaged the ceiling in the unit below. The Tenant testified that, as a result of this, the Landlord had to repair the drainpipes, drywall, ceiling and flooring.
19. The Landlord testified that due to the Tenant's she has seen bedbugs on the ceiling when she visits. The Landlord testified that, prior to the tenancy there were no bedbugs in the residential complex. The Landlord testified that she has to routinely have the residential complex sprayed for bedbugs.
20. The Landlord testified that she had heard from other residents that the Tenant stated that he doesn't care about the mess.
21. As evidence, the Landlord submitted photos as evidence of the unhygienic rental unit:
 - A table in the rental unit covered in ash. The Landlord testified that the Tenant is a smoker and consumes both tobacco and marijuana products.
 - Lifting on the veneer of the floorboards. The Landlord testified that this was due to water damage.
 - A garbage can covered in grime, a dirty looking fridge and further floor damage, as well as general dirt and grime on the floor.

- Garbage bags stacked up inside the unit. The Landlord testified that the Tenant only takes out his garbage once a week, regardless of how much there is, and will just leave it in the unit until that point.
- An uncleaned toilet and sink.
- A dirty looking couch and a coffee table covered in ash.
- Clutter all over the baseboard heaters and damage to the heaters, including removing the cover.
- Paint scrapped off the front door.
- A photo from the outdoor surveillance camera where the Tenant is shown dumping an unknown substance out of a garbage can. The Landlord testified that it was an unknown liquid and landed on the railing on the unit below.

Analysis

22. An N5 is Notice of Termination for cause. This Notice is pursuant to the Act:

64 (1) A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.

23. Based on the Landlord's uncontested evidence, I find on the balance of probabilities, that the Tenant has substantially interfered with the reasonable enjoyment of the residential complex of the other tenants.
24. I note that the combined testatory and photograph evidence paint a clear picture that the rental unit is in an unhygienic state. The picture is one that is beyond a normal state of messiness or untidiness and suggests a state that would pose a hazard to one's health. The photos show that the unit is covered in grime and dirt. The photographic evidence clearly corroborates the oral testimony of the Landlord; that there is a yellow film that oozes off the refrigerator. On this basis, I find that the Landlord has proven the allegation that the rental unit is in an unhygienic state.
25. Based on the Landlord's testimony, I find that the Tenant's lack of care regarding the condition of his litterbox substantially interferes with the other tenants of the residential complex. The Landlord testified that the smell from the box can be detected outside the unit at the very top of the stairs. The Landlord testified that the tenants of the adjacent units could detect the smell. I have little doubt that the odor from the litter box could be detected in the adjacent units if it can be detected in the stairwell.
26. The Landlord testified that she visits the Tenant on a monthly basis to collect the rent. During these visits, the Landlord asks for the Tenant to clean up the rental unit. The Tenant is thus aware of the condition of the hygienic state of his home. However, the Tenant chooses to take no action. For the tenants in the adjacent units, they are forced to live with the odor from the litterbox due to the Tenant's willful negligence.

Section 83 Considerations

27. The Landlord submitted that they wanted an eviction and compensation for the damages caused by the Tenant.
28. The Landlord testified that they knew of no reason to delay or deny eviction.
29. Based on the Landlord's uncontested evidence, 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

Section 88.1 Claim

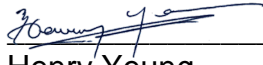
30. The Tenant wilfully or negligently caused undue damage to the rental unit or residential complex. Due to this, the Landlord has had to incur out of pocket costs that the Landlord is entitled to be reimbursed.
31. On the application, the Landlord claimed reasonable to repair the damage. To support this claim, the Landlord submitted the following receipts:
 - A receipt for legal fees - \$2,211.00
 - A receipt from Scott Trotter Plumbing - \$148.10
 - 11 receipts from Last Call Pest Control for bed bug treatment in the residential complex - \$8,927.00
32. Reviewing the claim, I note that the legal fees are ineligible for reimbursement under section 88.1 of the Act. Therefore, this part of the claim is dismissed.
33. The other two items are directly related to the conduct of the Tenant. The Landlord testified that the Tenant left water pooling in the kitchen sink and that this rotted the sink and required repairs. The receipt from plumbing relates to this. Therefore, this claim is allowed.
34. The 11 receipts relate to the bed bug treatment of multiple units that occupy the same floor as the rental unit. In the Landlord's submissions, I note that the source of the bed bug infestation is the Tenant, with the couch in the rental unit being a key vector. The Landlord testified that there was no infestation prior to the Tenant moving in. Therefore, this claim is allowed.
35. In total, the Landlord's total claimed reasonable out of pocket expenses are \$9,075.51.

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 June 2, 2024.
2. If the unit is not vacated on or before June 2, 2024, then starting June 3, 2024, 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 June 3, 2024.
4. The Tenant shall pay to the Landlord \$9,075.51, which represents the reasonable costs of repairing the damage.
5. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
6. If the Tenant does not pay the Landlord the full amount owing on or before June 2, 2024, the Tenant will start to owe interest. This will be simple interest calculated from June 3, 2024 at 7.00% annually on the balance outstanding.

May 22, 2024
Date Issued


Henry Yeung
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 August 14, 2024 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.