



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

Citation: Badlou v Carpenter, 2024 ONLTB 41705

Date: 2024-07-18

File Number: LTB-L-018077-24

In the matter of: BASEMENT UNIT 3, 2269 LAWN AVE
OTTAWA ON K2B7B1

Between: Pourya Saljoughi Badlou

And

James Carpenter

I hereby certify this is a
true copy of an Order dated
Jul 18, 2024
Landlord and Tenant Board

Landlord

Tenant

Pourya Saljoughi Badlou (the 'Landlord') applied for an order to terminate the tenancy and evict James Carpenter (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;
- 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;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the building has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord in a building that has three or fewer residential units and the Landlord resides in the building.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

The Landlord also applied for an order requiring 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 May 29, 2024.

The Landlord's Legal Representative, L. Duchene, the Tenant's Legal Representative, D. Danielson, and the Tenant attended the hearing.

The following witness testified at the hearing:

Davoud Saljoughi Badlou (DSB), the Landlord's brother, on behalf of the Landlord

It is determined that:

Preliminary Issue – Notices of Termination

1. The Tenant's Legal Representative submitted that both Notices of termination at the root of this application are defective. He submitted that the Notice to End Tenancy For Illegal Acts (N6 Notice) contains a fatal flaw as in the details there is no link between the alleged act and the residential complex. He also submitted that the Notice to End Tenancy For Causing Serious Problems in the Rental Unit or Residential Complex (N7 Notice) was also fatally flawed as the signature date on the N7 Notice is August 2, 2024 and the Termination Date is April 30, 2024 suggesting that the required notice period has not been met.
2. The Landlord's Legal Representative submitted that N6 Notice refers to the Landlord's window and the Tenant knows the Landlord resides in the residential complex. She also submitted that given the Tenant's knowledge of the date of the event and the location of the Landlord's window, the details in the N6 Notice ought not to be confusing to the Tenant. With respect to the N7 Notice, she submitted that the signature date was a typographical error and that the certificate of service required to be filed with the N7 Notice confirms that the notice period was met.
3. Section 43 of the *Residential Tenancies Act, 2006* (the 'Act') states:
 - (1) Where this Act permits a landlord or tenant to give a notice of termination, the notice shall be in a form approved by the Board and shall,
 - (a) identify the rental unit for which the notice is given;
 - (b) state the date on which the tenancy is to terminate; and
 - (c) be signed by the person giving the notice, or the person's agent.
 - (2) If the notice is given by a landlord, it shall also set out the reasons and details respecting the termination and inform the tenant that,
 - (a) if the tenant vacates the rental unit in accordance with the notice, the tenancy terminates on the date set out in clause (1) (b);
 - (b) if the tenant does not vacate the rental unit, the landlord may apply to the Board for an order terminating the tenancy and evicting the tenant; and
 - (c) if the landlord applies for an order, the tenant is entitled to dispute the application.
4. Section 61(1) of the Act 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.

5. Section 212 of the Act states:

Substantial compliance with this Act respecting the contents of forms, notices or documents is sufficient.

6. Based on the submissions before me I was not satisfied that the N6 Notice or the N7 Notice were defective. Firstly, given that there was no dispute as to when the N7 Notice was served on the Tenant which provided the appropriate notice period, I was satisfied that the signature date was merely a typographical order.
7. Secondly, the N6 Notice was given to the Tenant pursuant to subsection 61(1) of the Act. While, I accept the Tenant's Legal Representative argument and submitted case law, although I am not bound by it, that to be successful in this application the illegal act must have taken place in the rental unit or residential complex. However, I was not satisfied that the N6 Notice needs to explicitly state this nexus. Given that it is known to the Tenant that the Landlord lives in the residential complex, I was satisfied that the allegation in the N6 Notice referring to the "window of your Landlord" was sufficient to identify the location of the alleged act.
8. The purpose of a notice of termination is to provide a tenant notice of the allegation(s) a landlord intends to make, a tenant then has the choice to vacate in accordance with the notice or dispute it at a hearing before the LTB. It is at the hearing, that evidence is provided by both parties as to the allegation(s) in the notice. The requirement, in this case pursuant to section 61 of the Act for the allegation to have taken place at the rental unit or residential complex, can be reasoned via the parties' evidence at the hearing.
9. Section 212 of the Act permits substantial compliance with the Act with respect to notices of termination. Therefore, I find that both the N6 Notice and the N7 Notices are substantially compliant with section 43 of the Act.

Preliminary Issue - Disclosure

10. There was no dispute that the Landlord's Legal Representative did not serve the Tenant or his Legal Representative copies of two videos she uploaded to the portal. The Landlord's Legal Representative submitted that these two videos were too large to send via email and that she notified the Tenant she would be uploading them to the portal. The Tenant's Legal Representative requested that these videos not be permitted into evidence as they were not disclosed as required.
11. If parties want to make disclosure through the Tribunals Ontario Portal, they must sign and file the LTB's form called "Consent to Disclosure through Tribunals Ontario Portal" found on the LTB's website. There was no evidence before me that the parties signed this consent form.

12. The Landlord's Legal Representative chose to not rely on these two videos not disclosed as required.

Application

13. 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 pay \$907.00 as the reasonable costs to replace the broken window.
14. The Tenant was in possession of the rental unit on the date the application was filed.
15. On April 9, 2024, the Landlord gave the Tenant an N6 Notice of termination pursuant to section 61 of the Act which provided a termination date of April 30, 2024. The N6 Notice contains the following allegation:

-April 2, 2024 11:07 p.m. - you forcefully smashed the window of your landlord and broke the glass and frame resulting in criminal charges of mischief to property.

16. On April 9, 2024, the Landlord gave the Tenant an N7 Notice of termination pursuant to sections 63, 65 and 66 of the Act which provided a termination date of April 30, 2024. The N7 Notice contains the following allegations:

-April 2, 2024 from 8:30 a.m. to 12 p.m.- You called your Landlord defamatory words like, 'crazy' and 'psychopath' loudly. You threatened your Landlord by asking him to come out when he was afraid and sheltering in place at the advice of police dispatch.

-April 2, 2024 from 12 a.m. to 6 a.m. – knocking your Landlord's door at 12 am for a clearly non-emergency reason and being aggressive. Loud music and shouting throughout the night and saying 'F' word loudly.

-March 20, 2024 – nailing the wall at 4 am

-September 20, 2023 at midnight – loud music, shouting and using 'F' work, pointing flashlight at your Landlord's bedroom.

17. Section 63 of the Act states in part:

(1) Despite section 62, a landlord may give a tenant notice of termination of the tenancy that provides a termination date not earlier than the 10th day after the notice is given if the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex,

(a) wilfully causes undue damage to the rental unit or the residential complex; or

18. Section 65 of the Act states in part:

(1) Despite section 64, a landlord who resides in a building containing not more than three residential units may give a tenant of a rental unit in the building notice of termination of the tenancy that provides a termination date not earlier than the 10th day after the notice is given if the conduct of the tenant, another occupant of the rental unit or a person permitted in the building by the tenant is such that it substantially interferes with the reasonable enjoyment of the building for all usual purposes by the landlord or substantially interferes with another lawful right, privilege or interest of the landlord.

19. Section 66 of the Act states in part:

(1) A landlord may give a tenant notice of termination of the tenancy if,

(a) an act or omission of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant seriously impairs or has seriously impaired the safety of any person; and

(b) the act or omission occurs in the residential complex.

Evidence

20. The residential complex is a semi-detached bungalow with an upper unit and a basement unit. The Landlord resides in the upper unit, his entry door at the front of the house and the Tenant occupies the basement unit with his entry door at the side of the house.

21. The parties signed a written Residential Tenancy Agreement (Standard Form Lease) (the "Lease") for a one year term commencing September 15, 2023 at a monthly rent of \$1,599.00. The Lease provided that the Tenant pay a pro-rated amount for the period of September 15, 2023 to September 30, 2023 and that the monthly rent is due and payable on the 1st day of each month.

22. There was no dispute that the parties consented to receiving notices and documents via email in the Lease. The parties also agreed on additional terms and conditions in the Lease in part the following:

Party and loud noise: "no party or excessive noise after 11:00 PM."

Pets: "The tenant can have pets within the unit."

Backyard: "The backyard is shared between all residents."

23. There were two incidents of past noise disturbances alleged in the N7 Notice, namely on September 20, 2023 and March 20, 2024. The Tenant disputed using a flashlight towards the Landlord's unit on September 20, 2023. He also stated that on March 20, 2024, he was only hanging up one frame. The Landlord admitted under cross examination that there were no other incidents between September 20, 2023 and March 20, 2024 of loud noise worth mentioning in the N7 Notice.

24. The Landlord stated that he returned late on Easter weekend from being out of the country with his phone off. After landing, he turned on his phone and received a number of text messages from the Tenant about a problem with his unit. The Landlord stated that when he arrived home around midnight, the Tenant aggressively came to his door talking about these problems and commenting about the Landlord being on vacation and not available. The Landlord stated that he went with the Tenant to view the problems which were that the screen door to the Tenant's unit swings open and the backyard gate is noisy.
25. The Landlord stated that he advised the Tenant that he will fix these issues first thing in the morning and if he continues this behaviour the police will be called. The Landlord stated that throughout the night the Tenant was playing loud music and making noise in the backyard.
26. The Landlord provided copies of the text messages he received from the Tenant on this night into evidence. The following were texts sent by Tenant on April 1, 2024 at 10:19 p.m.:

"We need to talk about the broken door a few things....

Actually now.

... when you're back this weekend... it's important

I tried calling 2x.

Despite you thinking a landlord's "duties" are 9 to 5.....there are major issues we need to talk about

Let me know when you're ready.

27. The following were texts sent by the Tenant on April 2, 2024 at 12:08 a.m.:

"Do not threaten me.

I tried to be nice. Fix the door.

I understand you came back from a cool vacation....do not threaten me again.

We can be friends or atleast cohabiaounts

That's your 1st warning....I will not file this one. You're welcome.

I like and respect you. 8am

As you mentioned"

28. The Landlord stated that at 7:45 a.m. he went and removed the storm door and the backyard gate. He stated that after he removed the door and gate, the Tenant came out

and asked for them to be put back. The Landlord stated that he advised the Tenant that the storm door is removed temporarily for him to fix it and that the back gate is not part of his rental unit. The Landlord stated that he had to explain to the Tenant about their interaction the previous night as the Tenant did not remember.

29. The Landlord also stated that he then returned to his unit because the Tenant was chasing him around. He also stated that the Tenant said he would call the police, so the Landlord waited in his unit for the police to arrive. The Landlord also wrote to the Tenant advising to not contact him at his door and to please email or text. The Landlord further stated that he called his brother to come over.
30. The Landlord stated that the police arrived around 9:00 a.m., spoke with the Tenant and him separately, advised him it was a Landlord and Tenant Board issue and left around 10:00 a.m. The Landlord stated that after the police left, the Tenant started walking around the residential complex, making gestures, and shouting for him to "come out." The Landlord submitted a copy of a video he had taken from inside his unit wherein the Tenant can be seen through his living room window gesturing, pointing, and swearing.
31. DSB testified that he attended his brother's residence around 10:30 a.m. on this date at his brother's request. He testified that he saw the Tenant stomping around in front of the house. He also testified that they were watching the Tenant through the window of the living room where he could see the Tenant pointing, shouting, and threatening his brother to come outside.
32. After the Tenant made these threats, the Landlord and DSB stated that the police were called again. The Landlord stated that when the police arrived around 10:45 a.m., the Tenant went to his unit. He stated that the police went to talk to the Tenant and returned to tell him that the Tenant was now resting. The police left the premises after speaking with the Landlord.
33. The Landlord and DSB both stated that shortly after the police left, they heard the Tenant exit his unit and within minutes then heard a loud smash of glass breaking. There was no dispute that the window in the Landlord's office was broken from the outside. DSB described the incident as life threatening as he took shelter. The Landlord called the police again around 11:10 a.m.
34. The Tenant stated that he woke up on April 2, 2024 and realized that his storm door and the backyard gate were missing. He knew that the Landlord was to fix the door so he went to the Landlord's unit. The Tenant stated that while discussing the door, he believed he heard the Landlord under his breath threaten to kill the Tenant's cats. The Tenant agreed that he got very heated at this as his pets are like his children. He stated that he lost his temper and called the Landlord a "psychopath."
35. The Tenant stated that it was he who called the police the first time as he wanted it documented that the Landlord removed the door. The Tenant also acknowledged that he was upset with the Landlord and pointed out that in the Landlord's video his gesturing was not threatening, he was just letting the Landlord know that he is watching him because of the previous threat made by the Landlord.
36. The Tenant stated that he then went to his unit to calm down. He stated that after some time he went into the backyard to do some maintenance (lawn care) and accidentally and

without malice the window got broken. He stated that he tossed a rake to the side and it must have hit something, bounced up, and broke the window. The Tenant stated that he admitted this to the police but they strong armed him and put him under arrest.

37. There was no dispute that the Tenant was arrested and charged with Mischief to Property under the Criminal Code of Canada. The Tenant offered to pay the costs to repair/replace the window and believes this offer of compensation will resolve his criminal charges at the upcoming court date. He also confirmed that he is under conditions to not communicate with the Landlord other than by email.
38. The Landlord stated that it cost \$907.00 to repair the window and provided a copy of an invoice for the repair confirming this amount into evidence.

Analysis

39. Based on the evidence before me, I was satisfied that the Tenant committed an illegal act in the residential complex by breaking the Landlord's window. There was no dispute that the Tenant was criminally charged as a result of this incident.
40. Additionally based on the evidence before me, I was satisfied that the Tenant's conduct on April 2, 2024 was aggressive and threatening, and seriously impaired the safety of another person, namely the Landlord and his guest. The Tenant's conduct on this date also substantially interfered with the reasonable enjoyment of the building for all usual purposes by the Landlord.
41. There was no dispute that the Landlord had contacted the police twice on this date, and also called his brother to be with him out of fear due to the Tenant's conduct. The Landlord also stated that he no longer feels safe in his house and has left to stay with his brother. DSB testified using words like "take shelter" and "life threatening" in describing how he felt/responded to the Tenant's actions on this date.
42. The Tenant's Legal Representative argued that the Landlord's evidence was not credible and his witness' evidence was exaggerated. The Tenant's Legal Representative submitted that the Landlord relied on evidence in the police report and not what he in fact witnessed. He also submitted that the Landlord's evidence had inconsistencies when questioned about his authorities in the Lease signed by the parties.
43. With respect to the Tenant's Legal Representative submission on the Landlord's inconsistencies, I was satisfied that these were being taken out of context. The Landlord did not dispute that he did not see what or who broke the window, the fact that he said "rake" when providing evidence but had stated "rock" originally in his statement to police does not make his evidence on this date not credible. I find it more likely than not that the Landlord was just trying to answer the question, just like he was trying to give a reason in the statement as to what could have broken the window.
44. Further, there were no inconsistencies with the Landlord's evidence regarding the events of this day. For the most part, the parties did not dispute what occurred on this date. The Tenant's Legal Representative submitted that the inconsistencies were between the Landlord's subsequent actions and what the Lease permitted. The mere fact that the Landlord did not understand the terms in the Lease or the law, does not make his evidence inconsistent or unbelievable.

45. The Tenant's Legal Representative further submitted that the Landlord and his brother, DSB's evidence was inconsistent in that the Landlord stated that his relationship is in jeopardy with his brother because of having to stay at his brother's house and his brother, DSB, testified that he does not believe their relationship is under strain.
46. While although the Landlord and his brother had different opinions as to the status of their current relationship, the fact that they both feel differently about presently staying together, does not amount to an inconsistency. It is common for persons to have varying opinions. The Landlord and his brother, DSB were expressing their opinions, not facts, they were simply stating how they feel.
47. The Tenant's Legal Representative also submitted that DSB's evidence was prone to exaggeration using the term "life threatening" given that DSB acknowledged that he was in another room, approximately five meters away with a physical barrier (namely a door) between the window and himself when it broke. DSB used this term to describe how he felt at the time of hearing the window smash, which was shortly after the Tenant was at another window threatening his brother, and after the police had attended. I did not find this to be an exaggeration, I was satisfied that this was how he felt at that moment.
48. The Tenant alleged that the breaking of the window was accidental in that a rake he tossed took a "bad bounce" which broke the window. However, I did not find this assertion credible in the circumstances.
49. Based on the evidence before me, I find it more likely than not that the Tenant was angry with the Landlord starting the evening prior when the Landlord returned from being out of the country. The Tenant's mood was evident from his tone in the text messages sent to the Landlord this date. The Tenant referenced "important issues" and made comments like Despite you thinking a landlord's "duties" are 9 to 5." Given this, I was satisfied that the Tenant believed that the Landlord should be immediately available to address his concerns whenever they arise. Additionally, there was no dispute that as soon as the Landlord arrived home, the Tenant was at his door complaining of these problems with the storm door and gate making noise.
50. Despite the Tenant complaining of problems with these two items, when the Landlord removed the storm door for repair and removed the gate to stop the noise the next morning as promised, the Tenant immediately lashed out at the Landlord calling him names. The Landlord and his brother, DSB, stated that the Tenant was chasing/stomping around the house. The small portion recorded by the Landlord of the Tenant's conduct depicted him as aggressive, angry and threatening. I find it very unlikely that this had anything to do with an alleged threat to the Tenant's cats by the Landlord. I find it more likely than not that the Tenant had a certain expectation of immediate response/repair and was angry that it was not happening.
51. The Tenant's Legal Representative pointed out that the portion of the video entered into evidence was approximately 14 seconds and the Landlord acknowledged that the total length of the video taken was around 20 minutes. Given this, I was satisfied that this small portion of video does not reflect the entirety of the incident on that day.
52. However, I find it more likely than not that regardless of what the full video would show, the Tenant was clearly acting aggressively and threatening on this date. The video showed him standing outside the Landlord's living room window threatening him and taunting him

to come outside. I was satisfied that the Tenant's gestures were of a threatening nature, pointing and swearing, and he was obviously extremely angry at the Landlord.

53. Given the Tenant's undisputed demeanour on this date, I find it more likely than not that he wilfully broke the Landlord's window. The Tenant's explanation that the rake took a "bad bounce," was not plausible. There was no dispute that the window was double paned glass and located some distance above the ground, definitely higher than the length of a rake. The Tenant provided a copy of a photo of the area into evidence. In the photo there are two garden tools (one appears to be a rake) leaning up against the wall underneath the window in question, which is at least two to two and a half feet above the top of those tools.
54. Further, if breaking the window was an accident, why would the Tenant not go explain this to the Landlord. Instead he just waited in the backyard. The Tenant stated that there was no time as the police came and immediately arrested him. However, the police were only called after the window broke and had to get to the rental unit. It must have taken some time, at least more time than that required for the Tenant to walk from the backyard to the living room window to explain what happened. I find it more likely than not that the Tenant was still very angry and that is why he stayed in the backyard out of sight.
55. The Tenant's Legal Representative submitted that the Tenant's offer to repair the window demonstrates his credibility. I find it more likely than not that the Tenant has only offered to repair the window out of regret, hoping this will resolve his criminal charges, and only as a gesture to defend this application. To date, the Tenant has not made this payment.

Compensation for Damages

56. Based on the findings above, I was satisfied that the Tenant wilfully caused undue damage to the residential complex by breaking the Landlord's window.
57. The Landlord has incurred reasonable costs of \$907.00 to replace the window that was damaged and could not be repaired and is entitled to compensation for those costs.

Daily Compensation

58. The Tenant was required to pay the Landlord \$1,524.53 in daily compensation for use and occupation of the rental unit for the period from May 1, 2024 to May 29, 2024. This amount is to be reduced by any amounts paid to the Landlord after May 1, 2024.
59. Based on the Monthly rent, the daily compensation is \$52.57. This amount is calculated as follows: \$1,599.00 x 12, divided by 365 days.
60. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
61. There is no last month's rent deposit.

Relief From Eviction

Subsection 83(3) of the Act

62. Pursuant to section 83(3)(a) of the Act, the Board must refuse to grant eviction if “satisfied that, a landlord is in serious breach of the landlord’s responsibilities under this Act or of any material covenant in the tenancy agreement.”
63. The Tenant’s Legal Representative submitted that the following are serious breaches by the Landlord:
- a) Imposition of new rules at residential complex;
 - b) Tenant’s right to privacy;
 - c) Removal of storm door;
 - d) Removal of backyard gate; and
 - e) Snow removal and unjust enrichment.
64. In order for subsection 83(3)(a) of the Act to apply, the Board must be satisfied the Landlord is in breach and that the breach is serious and ongoing at the time of the hearing. For the reasons that follow, I find that the Landlord’s application for eviction shall not be refused. This does not mean that the issues raised by the Tenant could constitute breaches of the Act. However, subsection 83(3) (a) of the Act is only reserved for breaches that are serious such to require denial of the eviction.

New Rules

65. There was no dispute that after the incident on April 2, 2024, the Landlord provided the Tenant with a letter titled “Common area regulation reminder.” The Tenant’s Legal Representative submitted that the restriction of the Tenant’s ability to smoke in the yard is a material breach of the Lease as there were no smoking rules provided in the Lease. Also, the Tenant’s Legal Representative submitted that the restriction of the Tenant’s use of the backyard to be within the hours of 8:00 a.m. to 10:00 p.m. amounts to a material breach of the Lease as well.
66. The evidence before me was insufficient to find that the Landlord is enforcing these rules. The Landlord has not been living at the residential complex since the date of the incident. Therefore, I was not satisfied that despite this letter from the Landlord to the Tenant, that the Tenant has been restricted from smoking or using the backyard.
67. The Tenant was upset that the Landlord placed rat traps in the backyard, as these had been previously removed at the request of the Tenant. The Tenant believes that the traps may be harmful to his cats. The Tenant stated that his cats are well trained. I was satisfied that if the Tenant wanted to use the backyard with his cats, the Tenant could temporarily move the traps to another location or train his cats to not go near them.

Tenant’s right to privacy

68. There was no dispute that the Landlord has installed cameras in and around the residential complex. The Tenant stated that two of the cameras look out into the yard and two of the cameras in the yard are pointed at his unit. The Tenant’s Legal Representative submitted that the test comes down to the “reasonable expectation of privacy.”
69. The Tenant’s unit is in the basement of the residential complex which is a bungalow. The Tenant provided a number of photos into evidence of the residential complex including the

backyard. In the photos provided, the windows to the Tenant's unit are below ground level in cement window wells. Given that the windows are below grade and in cement window wells, I find it highly unlikely that the cameras installed by the Landlord in the backyard can see into the Tenant's unit. As well, there was no evidence before me that the Tenant does not have window coverings on these windows.

70. There was also no dispute that the parties agreed in the Lease that the backyard is shared between all residents. Given this, the Tenant should not have any reasonable expectation of privacy while in the backyard. Therefore, I was not satisfied that the installation of cameras at the rental unit amounts to a serious breach by the Landlord.

Removal of Storm Door

71. There was no dispute that the Landlord removed the storm door. The Landlord stated that he removed it to repair it because the Tenant complained that it has been swinging. The Tenant did not dispute that the storm door does not latch. The Landlord stated that he has not reinstalled the door because he is not staying at the rental unit due to the incidents on April 2, 2024. The Tenant stated that the door provides an extra layer of security and protection in the winter.
72. I am not satisfied that this lack of repair and removal of the storm door amounts to a serious breach of the Landlord's obligations under the Act. There was no dispute that the Tenant has a main door to his rental unit that can be secured. This storm door was in addition to that door.

Removal of Backyard Gate

73. There was no dispute that the Landlord removed the backyard gate. The Landlord stated that the Tenant complained because the hinges made noise. The Landlord chose to remove it to fix the problem of the noise. The Tenant states that the removal of the door affects his use of the backyard and creates a safety hazard as the ground is uneven where the gate used to be.
74. The evidence before me was insufficient to find that the removal of the gate has affected the Tenant's use of the backyard. The Tenant is able to use the backyard with his cats, he stated that they are well trained, so I was satisfied that the gate is not necessary to keep them secure. Therefore, I was not satisfied that the removal of the backyard gate amounted to a serious breach by the Landlord.

Snow Removal and Unjust Enrichment

75. The Tenant's Legal Representative submitted that it is the responsibility of the Landlord to take care of snow removal which has been upheld by the Court of Appeal. The Tenant's Legal Representative submitted that the issue here is that the Landlord has been unjustly enriched as the Tenant did not receive compensation for snow removal.
76. There was no dispute that the Tenant has assisted with snow removal at the residential complex. However, I am not satisfied that a claim of unjust enrichment amounts to an on-going serious breach by the Landlord. The Tenant had the right to file his own application and has not done so to date.

Subsection 83(1) and 83(2) of the Act

77. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would not be unfair to postpone the eviction until July 31, 2024 pursuant to subsection 83(1)(b) of the Act.
78. The Landlord's Legal Representative submitted that the trust has broken down between the parties. She also submitted that the Tenant's conduct and wilful damage to the residential complex has instilled fear into the Landlord. She further submitted that the Landlord has not be able to stay in his home. The Landlord has been residing with his brother's family since this incident. The Landlord also stated that he has been undergoing counseling as a result of this incident. The Landlord's Legal Representative requested an expedited eviction order.
79. The Tenant's Legal Representative submitted that eviction should be the last resort and that this was only one incident which the Tenant maintained was not wilful. The Tenant stated that he only has seasonal work right now and is trying to get his finances together. He also acknowledged that he is behind in rent but hoped to have the rent arrears paid soon. The Tenant stated that the rent at the unit is reasonable compared to the current market and that if evicted given his current finances he is not sure of his alternatives.
80. The test for an illegal act under the Act is not same as that in the criminal or federal court. Section 75 of the Act provides that the Board may issue an order terminating a tenancy and evicting a tenant in an application under section 69 based on a notice of termination under section 61 whether or not the tenant has been convicted of an offence relating to an illegal act.
81. The Landlord resides in the same building as the Tenant and has not been able to return to his home out of fear. The Tenant's actions were inexcusable, of a threatening nature, and were found to be wilful. Given that the Landlord is currently living elsewhere and the Tenant's stated current financial issues, I find that it is only fair to delay the eviction until the end of the month.

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 July 31, 2024.
2. If the unit is not vacated on or before July 31, 2024, then starting August 1, 2024, 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 August 1, 2024. The Sherrif is requested to expedite the enforcement of this order.
4. The Tenant shall pay to the Landlord \$1,524.53 (less any amounts paid by the Tenant to the Landlord after May 1, 2024), which represents compensation for the use of the unit from May 1, 2024 to May 29, 2024.

5. The Tenant shall also pay the Landlord compensation of \$52.57 per day for the use of the unit starting May 30, 2024 until the date the Tenant moves out of the unit.
6. The Tenant shall also pay to the Landlord \$907.00, which represents the reasonable costs of replacing the damaged property.
7. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
8. The total amount the Tenant owes the Landlord is \$2,617.53, plus 52.57 per day for the use of the unit starting May 30, 2024 until the date the Tenant moves out of the unit, less any amounts paid to the Landlord after May 1, 2024.
9. If the Tenant does not pay the Landlord the full amount owing on or before July 31, 2024, the Tenant will start to owe interest. This will be simple interest calculated from August 1, 2024 at 7.00% annually on the balance outstanding.

July 18, 2024
Date Issued



Lisa Del Vecchio
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 February 1, 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.