

Devious tenants must be stopped from gaming the system

'How one landlord followed all the rules but went 18 months without being paid rent.'

Anyone interested in becoming a landlord in Ontario could learn some lessons from a recent court case which demonstrates how an unscrupulous tenant was able to live rent-free for 18 months.

Rogers Afam Nwabue was the tenant of an apartment on Howell Square, in Scarborough. On April 1, 2015, he stopped paying rent. After the landlord launched eviction proceedings at the Landlord and Tenant Board, the tenant consented to an order for eviction as of July 31, 2015. In exchange, the landlord agreed to waive rent arrears to June 30. Instead of moving out as he agreed to do, the tenant applied to the board for a review of the eviction order he had already agreed to. On July 29, 2015, the board refused the request for a review. In a textbook example of how to delay eviction, the tenant then appealed both orders of the Landlord and Tenant Board to a three-judge panel of the Divisional Court. The tenant filed the required appeal papers in September 2015, but made no effort to set a hearing date. The landlord's lawyer sent the tenant letters in February, March and June 2016, but the tenant did not reply.

Finally, in November last year, the landlord filed a request with the court to quash the appeal as "frivolous, vexatious and an abuse of process . . . manifestly devoid of merit and . . . designed for an improper purpose — to remain in the premises without paying." The tenant was notified of the November 22 hearing date but did not appear. Incredibly, on that date, the judge refused to quash the appeal but instead set a new hearing date for December 6. A few days before the new date, the tenant faxed the court to say that the date was inconvenient and conflicted with his exams outside of Toronto.

By December 6, nothing further had been heard from the tenant and the court proceeded with the appeal. On behalf of a three-judge panel of the Divisional Court, Justice Michael Dambrot dismissed the tenant's appeal on December 9 and wrote: "It is plain that the tenant was evading contact and avoiding a hearing, particularly in light of the fact that he had been in possession of the apartment rent-free since April 1, 2015."

The court awarded the landlord costs of \$5,000, although the likelihood it can be collected, along with the rent arrears, seems remote given the history of the case.

The court directed the sheriff to give possession of the unit to the landlord "immediately." In Toronto, the sheriff's office is typically backlogged and evictions can take weeks or even months.

Names of tenants who do not pay rent are not made public by the Landlord and Tenant Board. This, I believe, contravenes the principle of an open and transparent judicial process and makes it difficult to keep a database of deadbeat tenants.

It is only when tenancy cases wind up in court that the names of the tenants are made public.

The Ontario government needs to take action to prevent scofflaws from getting away with not paying rent for months on end. The solution, I suggest, would be to require tenants to pay rent arrears to the board in order to dispute an eviction application based on nonpayment.

Landlords should always be very careful to check credit, as well as job and landlord references before handing over the keys to a rental unit.

Forewarned is forearmed.

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