



Order under Section 69
Residential Tenancies Act, 2006

File Number: SWL-44407-20

In the matter of: 301, 84 WILSON AVENUE
KITCHENER ON N2C 1G6

Between: Waterloo Region Housing Landlord

and

Maria Magalhaes Tenant

Waterloo Region Housing (the 'Landlord') applied for an order to terminate the tenancy and evict Maria Magalhaes (the 'Tenant') because the Tenant has seriously impaired the safety of any person.

This application was heard by video hearing on March 29, 2021.

The Landlord, through the attendance of Linda Stone, attended the hearing. The Tenant attended the hearing.

Determinations:

1. This electronic hearing was not good. The audio was frequently awful. And hoping the Tenant will forgive me, the Tenant is elderly and lacking knowledge as to the most basic operations of a computer. Finally, English was not the Tenant's first language.
2. Notwithstanding the above, I am reasonably confident that I was clothed with enough evidence to understand what had gone on here. The Tenant has impaired the safety of another person.
3. The Landlord's evidence (albeit, mostly hearsay) was understandable, detailed and measured, and it is preferred. Furthermore, the Landlord's disposition toward this Tenant was indulgent and compassionate, despite very serious misconduct by the Tenant.
4. The Tenant, after the consumption of alcohol, can be, and has been, belligerent and violent. However, the Landlord has proposed that the tenancy continue, with conditions.
5. 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 condition(s) set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

6. There needs to be some clarity as to what future behaviour may end the Tenant's tenancy through the engagement of section 78 of the Act.
7. Shouting at, or arguing with, other Tenants in the residential complex, or with the Landlord or representatives of the Landlord may be grounds for service of another notice of termination but should not be the foundation for an application under section 78.
8. The behaviour described immediately above is, obviously, unwanted. However, the difference between raising one's voice and shouting can be subjective. Furthermore, apart from further subjectivity, I do not believe that the Tenant should be prohibited from expressing disagreement with another tenant or with a representative of the Landlord.
9. This is distinct from violence or threats of violence. Any unconsented touching of another individual in the residential complex is an assault. The touching need not be forceful or cause bodily harm.

It is ordered that:

1. The Landlord's application for eviction of the Tenant is denied on the condition that:
 - a) The Tenant shall totally abstain from committing any act of violence as against another tenant of the residential complex, and guests of such persons, any agent/employee of the Landlord or guests of the Landlord or anyone else lawfully on the grounds of, or within, the residential complex;
 - b) The reference to violence above is to be given a broad and expansive meaning and include unconsented to touching that may not cause bodily harm or injury of any kind; and
 - c) Furthermore, the Tenant shall totally abstain from uttering any threat(s) of violence against any of the persons described in paragraph 1a above.
2. For the period from the date of this order to and including May 12, 2022, should the Tenant fail to comply with the conditions set out in paragraph 1 above, then, within 30 days of the breach, 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.
3. The Tenant shall pay to the Landlord \$190.00 for the cost of filing the application.
4. If the Tenant does not pay the Landlord the full amount owing on or before May 31, 2021, the Tenant will start to owe interest. This will be simple interest calculated from June 1, 2021 at 2.00% annually on the balance outstanding.



May 13, 2021
Date Issued

Donald MacVicar
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.