



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

Citation: Toronto Community Housing Corporation v Michael, 2024 ONLTB 20082

Date: 2024-04-09

File Number: LTB-L-033084-23

In the matter of: 911, 100 HIGH PARK AVE
TORONTO ON M6P2S2

Between: Toronto Community Housing Corporation Landlord

And

Simeonee Michael Tenant

Toronto Community Housing Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Simeonee Michael (the 'Tenant') because:

- the Tenant has committed an illegal act in the rental unit or the residential complex (the N6 Notice of Termination);
- the Tenant has seriously impaired the safety of any person and the act or omission occurred in the residential complex (the N7 Notice of Termination).

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

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

The Landlord's Representative Chelsea Rostant, Witness - Braden Doherty and the Tenant and his Support Worker, Amy Cooper and Representative Sheila Warner, all attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. However, I will order relief from eviction in the form of conditions on the Tenant for continuation of the tenancy.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N6 Notice of Termination

3. On April 3, 2023, the Landlord gave the Tenant an N6 notice of termination deemed served on 8 April 2023. The notice of termination contains the following allegations:
- (i) the Tenant placed a letter under the door of another tenant in the building (the “victim”). The letter stated “*you are one dead bitch whore*”. This happened January 17, 2023 at 2:53 am, and was recorded on video. After reviewing the cameras, officers determined that it was the Tenant who placed the note at the door.
 - (ii) The victim and her friend entered the lobby of the residential complex, headed for the elevators, then took the lift to the victim’s floor, where she resides. The elevator door opened, and there was the Tenant, crouched, beside the garbage chute, holding a knife. The Tenant approached the victim, with a knife and said: “*this is for you, you are a dead bitch*”. The time was 3:02 am.
 - (iii) The victim was able to enter her unit after a short while. She then heard a banging on the door. The victim was afraid for her safety, due to the previous incidents. She heard a metallic banging on the door. She was afraid for her safety due to the previous incident involving the Tenant and the knife. CCTV footage later confirmed the Tenant was outside the victim’s unit, with a knife. The Tenant was later arrested and charged with various incidents under the *Criminal Code of Canada* “the CC”.

Illegal Act

4. The Tenant has committed illegal acts in the rental unit or residential complex by:
- (i) Uttering threats/death or bodily harm [contrary to CC 264.1]
 - (ii) Assault with a weapon or imitation weapon [contrary to CC 267]
 - (iii) Possess weapon, etc/ dangerous to public peace [contrary to CC 88(1)]
 - (iv) Uttering threats/death or bodily harm [contrary to CC 264.1]
 - (v) Harassment by threatening conduct to other person [contrary to CC 264(2)(d)].
5. The Tenant did not dispute that the above incidents took place. The Landlord presented its case through Officer Doherty, who testified at the hearing to all the above events. The Officer met personally with the victim, after the events, when she testified to what happened. Secondly, the first and third acts were caught on CCTV and the Tenant identified as the perpetrator. Moreover, the Tenant pled guilty to all of the above charges, before the presiding criminal Court (details were not provided as to the venue for the trial).
6. These are all serious charges. Uttering death threats or threats of bodily harm involves a potential jail term not exceeding 5 years on indictment or for summary conviction, up to 18 months. The assault with a weapon charge, on indictment, attracts imprisonment for up to 10 years, or on summary conviction, 18 months. The possession of a weapon charge and criminal harassment charges also could result in up to a 10 year custodian sentence (on indictment) or guilty conviction of an offence punishable on summary

conviction. I note also that these charges all had an element of planning, which is an aggravating factor.

7. In terms of the impact on the character of the residential complex, very little evidence was led in this respect, other than that the victim was fearful as a result of what happened to her. It was noted that the Landlord has zero tolerance for any crime in their complexes. There was not evidence of how these incidents actually affected others in the complex.

N7 Notice of Termination

8. This is the second ground of termination the Landlord seeks. On April 3, 2023, the Landlord gave the Tenant an N7 notice of termination deemed served on April 8, 2023. The notice of termination contains the same allegations as the N6 Notice of Termination.

Serious Impairment of Safety

9. The Tenant has seriously impaired or seriously impairs the safety of the victim by doing the four criminal acts identified in para. 4 herein.
10. This conduct occurred in the residential complex.
11. Again, there was no dispute that these acts took place.
12. The sole issue before me was relief from eviction.

Daily compensation, rent deposit

13. The Tenant was required to pay the Landlord \$1,119.62 in daily compensation for use and occupation of the rental unit for the period from May 4, 2023 to January 3, 2024.
14. Based on the Monthly rent, the daily compensation is \$4.57. This amount is calculated as follows: \$139.00 x 12, divided by 365 days.
15. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
16. There is no last month's rent deposit.

Relief from eviction

17. This was the main issue before me.
18. The question is, would it be unfair to grant relief from eviction.
19. I have already noted that the illegal acts/acts which impaired the safety of another, were all very serious. Officer Doherty noted that an arrest was necessary to protect the safety of the victim. Although there were no physical injuries to the victim, there very well could have been, had the victim not been in the presence of her friend, who basically acted as a

shield. The Landlord was not aware of any other charges. This weighs in favor of evicting the Tenant.

20. The Tenant testified that he did suffer from suicidal ideation the night of the incident, and Officer Doherty testified that he was being treated for mental health concerns at a hospital at the time of his arrest.
21. The Tenant's Representative, Ms. Warner noted that she had spoken with the Tenant's criminal lawyer, Mr. Sherman, and was told the Judge handling the case was considering a custodial sentence, and wanted to await the outcome of these LTB proceedings as a factor in determining whether the claimant should spend time in jail, if he was evicted, or at home, through some sort house arrest/conditional sentence.
22. The Tenant indicated at the hearing that he did feel remorse, which was why he pled guilty in Court, to save the Court's time. It would also appear that this was an isolated incident, and there were no other such issues involving the Tenant for the 18 years he has been in the building.
23. Clearly the Tenant was granted bail and he has been living in the same building as the victim for over one year. He has followed his bail conditions to stay away from her. He has not contacted her, and when he sees her in the building, as he testified, he walks away. He testified that he is committed to continue staying away from her. This factor is something I give some weight to in considering whether or not to evict. Clearly, the Justice (whether Justice of the Peace or the Presiding Judge), weighed the risk to the public, the victim, and was of the view that any risk could be managed by placing restrictions on the claimant, to stay away from the victim, though I was not informed of the precise bail terms.
24. The Tenant testified at the hearing.
25. He is 64.
26. He has been in the complex for at least 18 years. Prior to that, he was homeless for about 10 years.
27. The Tenant is Inuit, and grew up in Nunavut, where he attended an Indian day school.
28. His sole source of income is a disability pension.
29. The Tenant suffers from a fractured hip, and maintains mobility with the help of a scooter. Housing to accommodate such a device is more difficult. He is asthmatic and struggles with an alcohol addiction. He was drinking the night of the incident, which is an aggravating factor. He testified that he has cut down on his drinking. He claims he was after the victim because he thought she had stolen his laptop, cell phone and the contents of his wallet. But he testified that this happened after the incidents of concern, and so this could not have been a cause. His Representative noted that had previously told her that it was the summer before the four criminal acts.
30. He testified that the Landlord has not talked to the Tenant about his disabilities, though on cross examination, he admitted that he had told the Landlord's Tenancy Coordinator.
31. The Tenant testified that he has spent time in jail before. If evicted, he said he would be homeless, as his family is "*up West and in the Arctic*".

32. The Tenant has been taking steps to resolve his alcohol addiction. He has spent time with the Centre for Addictions and Mental Health, up to the time his Doctor went on maternity leave. A letter from Aboriginal Legal Services verified that the Tenant commenced an 8-week Addiction Support and Wellness Circle, in January 2024, for participants facing addictions.
33. A letter was provided from his Nurse Practitioner, Bundana Thapa, who wrote of his multiple health concerns, including coronary artery issues, respiratory issues, mobility issues, chronic alcohol abuse, resulting in multiple hospitalizations over the years. She noted that stable housing would greatly assist him in providing a conducive environment for ongoing treatment.
34. A letter from Greg Cook, an Outreach Worker at Sanctuary, noted that the Tenant was known to them for 10 years. They assist him with daily life issues including medical support. They noted the Tenant's deep respect for friends and acquaintances and how the Tenant deals with the ongoing trauma resulting from colonization and having been displaced from his childhood home. The Tenant is an artist who has made numerous pieces of soapstone over the years. The letter notes the Tenant has a network of friends and supports in the neighborhood. This includes an agency for Two Spirited people and TI (Tungasuvvingat Inuit), who provide him counselling and food. Amy Cooper is his case worker and testified at the hearing.
35. Ms. Cooper testified that the Tenant is set up for programs on anger management, and is on the waitlist for support from Anishnawbe Health Toronto. She has been working with him since October 2023. Prior to that he was with TI, who knows him well. She is in contact with him every day. She noted TI has nothing bad to say about the Tenant, and that he does a lot of their drop in programming. He does volunteer work with TI, such as cultural presentations, language "stuff", and even house cleaning. She noted there are no shelters if he were evicted. She noted that he is the "light of their organisation". She stated he is working on his trauma and not giving up.
36. The Tenant's next court day after the hearing was in the Gladue Court on January 18, 2024.
37. In her closing submissions, Ms. Warner noted that s. 83(1)(a) of the Residential Tenancies Act, 2006 (the "Act") charges me to have regard to all the circumstances, including those of the Tenant, and his background as an Indigenous person.
38. In my decision in LTB-L-060709-23-SA, at para. 77: I noted as follows:

In the journal article of Andrew Flavelle Martin, "*Creative and Responsive Advocacy for Reconciliation: The Application of Gladue Principles in Administrative Law*" (2020) 66:2 McGill LJ 337, the author stated that:

As a response to the estrangement and alienation of Indigenous peoples from the Canadian justice system, Gladue principles are central to reconciliation in sentencing and other criminal law contexts. However, the role of Gladue principles in administrative law broadly remains uncertain. In this paper, I argue that the factors underlying Indigenous people's estrangement and alienation from the justice system indicate estrangement and

alienation from the administrative state itself, and thus Gladue principles appropriately apply in administrative contexts.I argue based on this analysis that Gladue principles will most certainly apply in decisions about a penalty or a benefit for an Indigenous person...and can also apply more creatively – where a decision is about neither a penalty of a benefit.”

39. The author went on to note that in *Re Can-Am Urban Native Non-Profit Homes (Windsor) Inc., 2005 CarswellOnt 10450 (WL Can)(Ont Landlord & Tenant Board)*, a landlord applied to terminate a tenancy and evict the Indigenous tenant for illegal acts on the rental premises. Counsel for the tenant argued Gladue principles, specifically on restorative justice and lesser sentences. The decision maker rejected this argument on the conclusionary basis that “*this case is distinguishable from Gladue, as the Tribunal is considering the tenancy and not sentencing of the tenant.*”
40. I declined to follow that case. In my view, in the 25 years since the principles were introduced by the Supreme Court, they have been applied in the context of administrative law. In my view, s. 83(1)(a) of the Act requires me to look at any unique factors affecting the Tenant, as an Aboriginal man, as this is a part of “*all the circumstances*”, which are relevant under the s. 83(1)(a) analysis, when considering relief from eviction. In my view, although eviction proceedings before the Landlord and Tenant Board, are not akin to criminal sentencing proceedings: see *R. v. Gladue* or bail proceedings: see *R v. Robinson, 2009 ONCA 205*, or extradition proceedings, as in *United v. Leonard 2012 ONCA 622*, as the liberty of the Tenant is not at stake here, however, there are elements of criminality in this application, in the sense that all the allegations in the N6 and N7 involve criminal acts and proceedings.
41. Indigenous people continue to be overrepresented among people experiencing homelessness in Toronto and an estimated 1,042 Indigenous people were staying outdoors and in City-administered shelters on the night of April 21, 2021. Indigenous men represented the largest share of Indigenous homelessness. Indigenous people were more likely to experience chronic homelessness, to first experience homelessness as children/youth, and to have foster care experience. Indigenous people were more likely to report health challenges, particularly mental health challenges and multiple health challenges. Two Spirit, transgender and non-binary Indigenous people were more likely to experience health challenges compared to cisgender Indigenous men and women. Increasing incomes and access to affordable and supportive housing were identified by Indigenous people as the most important supports for finding housing. See *Indigenous Peoples’ Experience of Homelessness in Toronto: 2021 Street Needs Assessment City of Toronto Shelter, Support and Housing Administration and the Toronto Indigenous Community Advisory Board. (Meeting in the Middle: Developing an Indigenous Engagement Strategy & Action Plan (toronto.ca))*
42. Many of those factors are relevant here: Two Spirit identity; the Tenant was homeless; he was estranged from his childhood home; he faces serious health challenges; the Tenant is male; and there was evidence before me that the Tenant was a victim of colonialization.

43. Gladue encourages Courts to look beyond traditional methods of sentencing to alternate modes which are more appropriate to a defendant's unique situation and cultural background as an Aboriginal person.
44. By parity of reasoning, when I consider a Draconian remedy such as eviction, I must consider how the events before me arose, with a particular focus on the illegal acts and impairment of safety, and how they relate to the Tenant's circumstances as an Aboriginal man.
45. In my view, eviction is not the most fair option in this case.
46. The Tenant's risk to the community has been managed effectively over the last year with a separation order as part of his bail conditions. There is no reason why that could not continue with an appropriate s. 78 sanction that the Tenant must keep away from the victim, or face final eviction through an ex parte application by the Landlord.
47. In TSL-27092-12 Member Carey, now Vice Chair Carey, held in relation to an application for eviction pursuant to a second N5 where the Tenant came home early in the morning, intoxicated, banged on the door of another tenant and made threats, that relief was warranted, as the tenant's behaviour was linked to alcoholism, which is a disability under the Ontario Human Rights Code, and thus the landlord has a duty to accommodate up to the point of undue hardship.
48. In TEL-26193-12, the tenant, confined to a wheelchair, lost her temper and physically assaulted the security tenant who was injured and treated at a hospital. The tenant was charged with assault under s. 266 of the Criminal Code of Canada. The tenant was remorseful. Weighing such factor as the difficulty in finding accommodation for physically disabled persons and long wait list for accommodation, the fact that the tenant was undergoing treatment for anger management, and that it was an isolated incident, the Member imposed strict conditions to protect the other tenants.
49. In *Beboning v. Wigwamen Inc.*, 2008 CanLII 63135 (ON SCDC), the Ontario Divisional Court held that the LTB had jurisdiction under s. 204 of the Act to require the tenant to attend an alcohol withdrawal program.
50. In *Capano v. Smith* [2007] O.J. No. 5074, it was held that the LTB has the jurisdiction to fashion a remedy, something akin to a mandatory injunction, to prevent the recurrence of improper conduct from continuing throughout the course of the tenancy.
51. The Tenant has done good work in being an integral part of his community as an Indigenous man, despite having a hard start in life. He is connected to programs for his addiction, and is seeking help for anger management. He is using his artwork as a way to reach out to others, and make a contribution to society. There were several letters before

me today, from people deeply concerned about his situation who have an active role in his ongoing fight for mental health, sobriety and anger management. He rides a scooter, due to his disability, and finding housing with accessibility for a scooter is more difficult. He has a strong network of friends.

52. For the Landlord, I accept that they have a zero tolerance policy for any crime in their units. I accept that the charges were serious. That said, there was not any real evidence before me as to how these incidents have affected/impacted the community. Nor did the victim herself provide any evidence.
53. In my view, to take the victim out of his community through eviction, whereby he would lose his home through criminal sentencing and a possible custodial sentence, would have a devastating impact on the Tenant, his mental health, and future. He would lose his community supports, and upon release, would once again face homelessness. It may be virtually impossible for him to find accommodation as an Aboriginal man, with many disabilities, and who requires a mobility device. In my view, the best way to manage the risks in this case is by the imposition of strict sanctions on the Tenant/the tenancy.
54. 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.

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 reasonably cooperate with the Landlord in discussing and implementing a plan to accommodate his disability (alcohol addiction) with an aim to minimising the negative impact of any behaviour linked to his disability on the Landlord or other tenants of the residential complex
3. The Tenant shall not physically or verbally assault, threaten or harass, any other tenant or person in the residential complex while under the influence of alcohol or otherwise.
4. The Tenant shall not carry or possess any weapon or dangerous article in the complex or threaten, harass or assault another tenant with such items, while under the influence of alcohol or otherwise.
5. The Tenant shall continue to actively participate in anger management programs and programs for alcohol addiction, for as long as is deemed necessary by his medical support team.
6. If the Tenant fails to comply with the conditions set out in paragraphs 2 – 5 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.

7. The Tenant shall pay to the Landlord \$1,119.62, which represents compensation for the use of the unit from May 4, 2023 to January 3, 2024.
8. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
9. The total amount the Tenant owes the Landlord is \$1,305.62.
10. If the Tenant does not pay the Landlord the full amount owing on or before April 20, 2024, the Tenant will start to owe interest. This will be simple interest calculated from April 21, 2024 at 7.00% annually on the balance outstanding.

April 09, 2024

Date Issued

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.