



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

Citation: Hellenic Home for the Aged Inc. v Vrozoz, 2024 ONLTB 20134

Date: 2024-04-16

File Number: LTB-L-020154-22

In the matter of: 302, 11 WINONA DR TORONTO
ON M6G3Z8

Between: Hellenic Home for the Aged Inc. Landlord

And

Marika Vrozoz Tenant

Hellenic Home for the Aged Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Marika Vrozoz (the 'Tenant') because:

- 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.

This application was heard by videoconference on July 21, 2022, October 13, 2022, January 27, 2023 and January 4, 2024.

The Landlord and the Landlord's Legal Representative L. Corrente and the Tenant and the Tenant's Legal Representative D. Schofield attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Taking into account the circumstances of both Parties, a conditional order will be granted.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The Tenant resides in a unit in seven story seniors apartment building with approximately 150 units. The Tenant has resided in the rental unit since July 2004.

4. On July 2, 2021 and April 5, 2022, the Landlord gave the Tenant N7 notices of termination. The notices of termination contains the following allegations:
 - On June 29, 2021, the Landlord’s Property Mangers attended the unit and observed a lit oil candle in the unit. The Tenant stated she always has an open flame candle. The Tenant fails to appreciate her actions are seriously impairing the safety of others living and working in the building.
 - Other allegations ranging from a unit fire in 2008; a 2008 fire alarm in the hallway triggered by “a hot candle” or some kind of smoke emerging from the unit; and a 2015 observation of an open flame candle in the unit.
5. The Landlord sought a termination of the tenancy due to a serious impairment of safety caused by the Tenant burning an open flame candle in the rental unit, contrary to the terms of her lease and the Landlord’s Policies.
6. The following facts are undisputed:
 - a. On June 29, 2021 the Tenant had an oil, open flame candle burning in her unit which was suspended from the ceiling of the living room;
 - b. There was a prior fire in the unit which began when the Tenant was not present in the unit;
 - c. The Tenant signed the Landlord’s policy “not to cause or have an open flame in the unit, including lamps, candles or oil candles”; and
 - d. The Tenant has burned oil candles as part of her religious practices.
7. The Landlord’s Housing Administrator Marilyn Gitsidis (‘MG’) testified on behalf of the Landlord and gave the following evidence that was uncontested by the Tenant:
 - a. The residents of the residential complex are seniors, many of the residents in the complex have mobility issues, some of the tenants have visual, hearing or cognitive impairments;
 - b. In the event of a fire in the complex, many tenants would require assistance in get out of bed, locating exits and using stairs and would require assistance to evacuate the building; and
 - c. There are staff of the Landlord who also work in the residential complex.

The Landlord’s Evidence

8. MG testified that since 2010 the Landlord has a “no open flames” policy in the residential complex to protect the health and safety of its tenants and staff. The policy was established due to challenges of evacuation for the elderly tenants and staff due to fires. Tenants were asked to sign the policy when it was instituted, and the Tenant signed the policy on December 6, 2010. Additionally, the Tenant’s lease states that the Tenant will comply with the Rules and Regulations established by the Landlord, which the Landlord may make from time to time, and also contains a Fire Hazard clause.

9. The Parties dispute whether the policy is applicable to the Tenant, having been signed years after the commencement of her lease and whether the Tenant fully understood the policy when she signed it. However, I would note that the matter before me to determine is whether the action of the Tenant in burning an oil based open flame candle suspended from the ceiling seriously impaired the safety of any other person. Whether the Tenant either understood or breached the Landlord's open flame policy, or not, is not crux of the issue before me. That question may more properly lie in an application for substantial interference with the Landlord rights, privileges or interest. The issue to be determined in this application is whether it can be found that an oil based open flame candle causes a fire hazard which seriously impairs the safety to others.
10. It was uncontested that there was a prior fire in the Tenant's rental unit that caused the residential complex to be evacuated by the Fire Department on September 7, 2007, when the Tenant was not home, which caused substantial damage to the rental unit of approximately \$100,000.00 of damages. The Toronto Fire Services report from the incident indicated that the fire originated in the Tenant's unit. The Landlord entered into evidence the report of Jason D'Ornellas ('JD') a Forensic Engineer, specializing in fire origin and cause investigation, who testified that he read the Summary Investigation Report prepared by Arcon Engineering Consultants regarding the fire of 2007, and concluded that Arcon eliminated all causes of ignition but for the use of candles and found that the pattern of fire damage was consistent with the use of candles unattended. The Landlord gave uncontested evidence that after this fire there was a meeting with the Tenant to discuss the fire. MG testified that in the meeting the Tenant was advised not to have open flames in the unit.
11. MG testified that subsequent to the fire in September 2007, the Tenant was found to have an open flame oil lit candle in the unit and on September 23, 2008, she met with the Tenant to ask her to dispose of the candles and sent a letter.
12. MG testified on October 15, 2015 a personal support worker assisting the Tenant reported to the Landlord that the Tenant had an open flame candle burning in the unit that day, and as a result the Landlord served the Tenant with an N5 Notice of Termination on October 15, 2015.
13. The Landlord's Environmental Services Manager Bill Pagoulatos ('BP') testified on behalf of the Landlord and stated that on June 29, 2021, he attended in the Tenant's unit and observed an open flame oil candle suspended from the ceiling burning in the unit, in proximity to religious icons and artificial candles. He testified that his colleague, attending the unit with him, blew out the candle and the Tenant then turned on a battery-operated candle by the shrine.
14. The Landlord takes the position that the Tenant was warned on several occasions of the danger to herself and others in the residential complex of having an oil burning open flame candle in her unit, she disregarded those warning and she had access to a batteryoperated candle that she was able to use in the area.

15. JD gave expert evidence on behalf of the Landlord that an open flame presents a substantial fire hazard, which is greater when burning oil candles which are in close proximity to combustible materials, and where a candle is suspended. He testified that from the photographs entered into evidence, the candle that was seen burning in the unit was an oil candle with a floating wick that was suspended from the ceiling and in close proximity to the Tenant's shrine which contains combustible materials including synthetic flowers, lace window coverings, wood and paper. JD provided this evidence having viewed photographs of the Tenant's suspended candle and shrine; he did not attend the unit to view the candle or its location or proximity to combustibles personally. He testified that in his opinion any such burning oil candle itself created a substantial fire hazard, with an enhanced risk if left unattended. He concluded that the risk of fire in the unit due to use of an open flame is "obvious and serious risk to her own safety and that of others in the residential complex."
16. The Landlord did not dispute that the Tenant burns oil candles as part of her religious practices. The Tenant gave no evidence at the hearing and the Landlord testified that there was never a request made for religious accommodation, until after the application had commenced. The Landlord states that the Tenant did not request accommodation prior to the Application, did not provide the Landlord with any information about her needs and did not cooperate with the landlord in the development and implementation of the accommodation provided.
17. MG testified that the Landlord the Landlord did develop and implement a suitable accommodation plan for the Tenant by taking the following actions:
 - a. In 2008 the Landlord had a Priest from the Greek Orthodox church attend at the residential complex to speak to the tenants, along with the fire department, to inform them about the hazards of lighting candles and the use of battery operated candles as an appropriate alternative, both from a fire safety and religious perspective. The Tenant was invited to and attended that information session;
 - b. The Landlord made special religious faux candles available for purchase by tenants which could be used in their units as a safe alternative to burning candles;
 - c. The Church, which is located less than two blocks away from the Residential Complex, permits parishioners to light candles during any service. The Tenant has been attending the Church for the past 53 years and continues to attend with her family;
 - d. The Landlord has arranged for tenants to light candles in a supervised group setting during religious ceremonies and memorials; and
 - e. In or around September 2021, the Landlord contacted the Church to request that it communicate in writing to tenants that the use of oil candles was dangerous and welcome them to attend at Church to light candles. The Church provided such a letter, which was shared with the Tenant.

18. The Landlord seeks a termination of the tenancy as an open flame oil based candle poses a substantial fire risk and impairment of safety to the Tenant, other tenants in the residential complex and to the Landlord's staff. The Landlord takes the position that the Tenant burns the open flame candle knowing of the risk, having been informed, having had a previous fire in her unit and having signed the Landlord's no open flame policy. They assert that the Tenant's behaviour is not likely to change as there has been a pattern of burning oil candles.

The Tenant's Evidence

19. The Tenant does not dispute that she had an oil burning open flame candle in the unit in June 2021. The Tenant's son George Vrozos ('GV') attended the hearing and gave evidence on behalf of the Tenant. GV testified that he was asked by his mother to remove the oil burning open flame candle from her unit in June 2021 and he did so immediately and provided her with batter operated candle. He testified that his mother attended her church and spoke with Reverend Karathanasis and was advised by him that she could use a battery operated candle to practice her religious beliefs.
20. GV gave uncontested evidence that since June of 2021 his mother has not had oil based open flame candles and has only used batter operated candles for her religious practices, the prior candle has been removed from its fixture, and she understands the seriousness of the issue.
21. The Landlord's Legal Representative submits that the Tenant may not have understood the previous letters or policy document sent to her in English, but once she was advised of the issues and requirements in Greek she "understood the situation, took all appropriate measures to accept that burning an oil candle had the potential to be dangerous and immediately" complied with the requirements of her lease.
22. The Tenant seeks to preserve her tenancy with a condition order as she is elderly, has resided in the unit for 20 years and has medical conditions that require medical intervention.

Legal Analysis

23. Section 66(1) of the Act states:

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.

24. Having considered the uncontested evidence before me, I find that the Tenant had an oil based open flame candle burning in her unit in June 2021. I find that having an open flame candle in the unit in and of itself is a potential fire hazard, but also in consideration of the fact that the candle being suspended from the ceiling in a glass holder. It is also clear from the Tenant's own submissions that she understands that her candle was a fire hazard as stated in paragraph 46 of the closing submissions of the Tenant, she "took all appropriate measures to accept that burning an oil candle had the potential to be dangerous and immediately changed their behaviour".
25. The Board has consistently held that it is not necessary that anyone be actually injured due to the impairment of safety, it is sufficient that it is foreseeable that the act or omission could have resulted in or may result in a serious impairment of safety. I find that it is foreseeable that an oil based open flame candle suspended from the ceiling could pose a fire hazard in the rental unit posing a n actual and potential serious impairment of safety to the Tenant and the other seniors residing in the residential complex, especially in light of the potential difficulty in evacuating the population of a large seniors residence if a fire were to occur in the unit. I accept the Landlord's expert's general evidence statement that open flame candles pose a fire safety risk.
26. On the evidence before me, I find that the Tenant's conduct of burning an open flame oil based candle seriously impaired the safety of another person. This conduct occurred in the residential complex.

Relief from Eviction

27. The Landlord seeks a termination of the tenancy as the Tenant's practice of burning open flame candles creates a serious risk to the safety of the Landlord's other elderly tenants, staff and visitors to the Residential Complex. Further, it places the Landlord at risk of liability under occupational health and safety laws, risks damage to property, and exposes the Landlord to civil claims. The actions of the Tenant has seriously impaired the safety of others living in the seniors home.
28. The Tenant requests that her tenancy be preserved as she has not burned an open flame candle in the rental unit since the Notice of Termination was served on April 5, 2022, she is in her early nineties, has several health impairments, she has resided in the unit for over 20 years, and pays low market rent. In the alternative, the Tenant proposes a section 78 clause to prohibit use of candles in the unit for the duration of the tenancy; and a Landlord inspection of the unit if a breach is suspected along with quarterly inspections to determine compliance, upon 24 hours written notice of entry.
29. 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. Having considered the circumstances of the risk to the Landlord and other tenants in the building and the circumstances of Tenant and the fact that it was uncontested that the Tenant has not burned oil based candles in the unit since the N7 was served, I find that the Tenant has demonstrated an understanding of the risk, has changed her practices, and has the ability to comply with the order. I find that there would be substantial prejudice to the Tenant to lose her home and find it reasonable to grant her a final opportunity to preserve her housing. I find that the prejudice to the Landlord is minimized as a section 78 clause will be included in the order if the Tenant breaches the conditions.

30. The Landlord has incurred the cost of \$186.00 for filing the application and is entitled to reimbursement of those costs.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below:
 - a. The Tenant shall not burn candles in her unit for the duration of her tenancy; and
 - b. The Tenant shall permit entry into the unit for the Landlord to perform quarterly inspections of the rental unit to determine compliance with paragraph 1(a), upon 24 hours written notice of entry.
2. If the Tenant fails to comply with the conditions set out in paragraph 1 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.
3. The Landlord has incurred the cost of \$186.00 for filing the application and is entitled to reimbursement of those costs.
4. If the Tenant does not pay the Landlord the full amount owing on or before March 31, 2024, the Tenant will start to owe interest. This will be simple interest calculated from April 1, 2024 at 7.00% annually on the balance outstanding.

April 16, 2024

Date Issued

Nicola Mulima

Vice Chair, 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.