



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

Citation: Toronto Community Housing Corporation v Mohamed, 2024 ONLTB 14239

Date: 2024-03-05

File Number: LTB-L-022134-23

In the matter of: 720, 75 DOWLING AVE TORONTO
ON M6K3G7

Between: Toronto Community Housing Corporation Landlord

And

Samia Mohamed Tenant

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

- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant.

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 February 7, 2024.

The Landlord and the Tenant attended the hearing.

Determinations:

Preliminary Issue: Late Disclosure

1. During the hearing the Tenant requested permission to enter into evidence two doctors letters outlining requests for accommodation dated November 4, 2021, and February 6, 2024. The Tenant submitted that these letters had been shared with the Landlord

representative on February 6, 2024 because the Tenant's representative had been retained late.

2. The Tenant's representative also took the position that the November 4, 2021 letter had been sent to the Landlord shortly after it was drafted, and should be in their possession. The Landlord's representative did confirm that they had received this disclosure from the Tenant's representative, but had not had time to review with their client. It was the position of the Landlord's Agent that they Landlord had never received these letters from the Tenant, however, based on the unreliable testimony provided by the Landlord's agent, discussed in greater detail below I have placed little weight on this assertion.
3. Ultimately I elected to hear the evidence, but reserved as to which weight, if any, would be placed on it. Consequently, I find that the issue is moot as the Landlord has not made out their case, and it is therefore unnecessary to determine if accommodation would be required in this case.

The N5 Notice of Termination.

4. The Landlord alleges that the Tenant substantially interfered with its reasonable enjoyment or its lawful rights and privileges by denying entry to the rental unit for the purposes of installing a fire alarm. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the application is dismissed.
5. The Tenant was in possession of the rental unit on the date the application was filed.
6. On February 14, 2023, the Landlord gave the Tenant an N5 notice of termination deemed served on February 19, 2023. The notice of termination alleges that a contractor of Landlord attempted to enter the Tenant's rental unit to install a fire alarm on December 23, 2022 and January 13, 2023, but was refused access.
7. In order for the Tenant's refusal to constitute substantial interference, the Landlord must establish that it served notice of entry in accordance with the Act prior to the attendances. The Landlord did not appear to allege that they were entitled to enter without notice. Section 27(1)1 of the *Residential Tenancies Act, 2006* (the 'Act') permits a landlord to enter a unit to carry out repairs if they give at least 24 hours' written notice.
8. The Landlord called Mr. Jaemar Ivey, who is the Landlord's supervisor of Tenant Management of the residential complex. Mr. Ivey testified that the Landlord is mandated by an updated fire code to install new fire alarms in the Tenant's building and the Tenant's unit is the only one in the building which does not have the updated fire alarm. This is preventing the Landlord from closing the permit, as the Tenant has refused to allow the Landlord to install the updated device. During his testimony Mr. Ivey referred to letter addressed to the Tenant dated September 27, 2022 indicating that the Landlord required access to the Tenants unit to install an updated fire alarm, and seeking permission to allow the contractor to enter the rental unit.
9. The Landlord's witness also referred to a letter to the Tenant dated January 5, 2023 written by a Golam Haider, indicating the Landlord had attempted to enter the Tenants unit on

December 23, 2022 to install the updated fire alarms and were unable to gain access. It was indicated that the Landlord would attempt to enter the unit again on January 13, 2023, and indicated that a Notice of Entry would be provided.

10. I found Mr. Ivey's evidence to be disorganized and, at times, unreliable. On multiple occasions he made reference to events which occurred prior to the dates on the N5 notice, and appeared to confuse these events with events which were listed on the N5 Notice of termination. By way of example Mr. Ivey testified that he personally reached out to the Tenant in order to offer assistance with regards to entry into the Tenants unit, and subsequently the Tenant contacted the contractor and agreed verbally to allow them to enter her unit, only to deny entry when they arrived.
11. While Mr. Ivey originally appeared to attribute this event to one of the dates contained in the Notice of Termination, upon clarification it was confirmed that he was referencing events which had occurred in 2021, approximately two years prior to the notice being served. Due in part to his confusion regarding events, I find that Mr. Ivey provided little reliable testimony as to the acts alleged in the notice and during the voiding period.
12. During cross examination Mr. Ivey also confirmed that no Notice's of Entry for December 23, 2022 or January 13, 2023 were entered into evidence. The Landlord did not provide an explanation as to why the documents were not produced and entered into evidence.
13. I am not satisfied that the Landlord has met its evidentiary burden of establishing on balance of probabilities that they served written notice on the tenant (or had some other lawful right to enter the unit) for both attendances. There was some evidence before me referring to notice to the Tenant, or that the Landlord *would* give notice. However, as noted I have concerns with the reliability of the Landlord's evidence, and the Landlord failed to file supporting evidence regarding the notices that were purportedly served in advance of the attendances. I would have expected the Landlord to file these given that they ought to be readily available and are relevant to an important issue in this application. Given that I am not satisfied that the Landlord gave proper notice of entry to the Tenant, it follows that I am not satisfied that the Tenant substantially interfered with the Landlord's reasonable enjoyment or lawful rights and privileges, and the Landlord's application will be dismissed.
14. The Tenant asserted a number of times during the hearing that they are a person with a disability, and that they had communicated this to the Landlord in relation to the fire alarm. Given my findings above, I do not need to decide whether the Tenant is a person with a disability and, if so, whether the Landlord failed to accommodate their disability short of undue hardship. However, as noted by the LTB's *Interpretation Guideline 15: Human Rights*, landlords have a duty to accommodate tenants with disabilities short of undue hardship, and the accommodation process is meant to be cooperative.
15. I would further note that it is open to the Landlord to proceed with its intention of replacing the Tenant's fire alarm, subject of course to its duty to accommodate any *Code*-related needs, and also subject to its obligation to give lawful notice of entry. I would encourage the parties to work together to achieve a reasonable solution to their dispute.

It is ordered that:

1. The Landlord's application is dismissed.

March 12, 2024

Date Issued

Reid Jackson

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.