



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

Citation: Niagara Regional Housing v Sardachuk, 2024 ONLTB 60953

Date: 2024-08-16

File Number: LTB-L-045054-24

In the matter of: 2, 436 SCOTT ST
ST CATHARINES ON L2M3W6

Between: Niagara Regional Housing Landlord

And

Guy Sardachuk Tenant

Niagara Regional Housing (the 'Landlord') applied for an order to terminate the tenancy and evict Guy Sardachuk (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.

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 August 9, 2024.

The following people attended the hearing:

- The Landlord’s legal representative, Judith Callender;
- The Landlord’s property manager, Tammy Marquis;
- The Landlord’s witness, Paul Dion;
- The Landlord’s witness, Amanda Major;
- The Tenant; and
- The Tenant’s legal representative, Dan Shoom.

Determinations:

1. On June 4, 2024, the Landlord served the Tenant with an N7 notice of termination. The notice of termination alleges that the Tenant seriously impaired the safety of another person when he physically assaulted another tenant with a tire iron.
2. For the following reasons, the Landlord’s has proven the allegations in the N7 notice of termination. However, I find that a conditional order is warranted to accommodate the Tenant under Ontario’s *Human Rights Code*.

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The Landlord's Application

3. There is no dispute regarding the central allegations contained in the N7 notice of termination. During the afternoon of May 20, 2024, while another tenant, 'PD', was in the parking lot working underneath his car, his dog, 'Jasper', became loose from the fence next to him and attacked the Tenant's dog, 'Vader'. PD is 64 years old and the Tenant is 54 years old.
4. The Landlord's video surveillance (**Video #1**) shows the Tenant walking Vader through the parking lot when Jasper comes running towards them from where he was tied to the fence. Although Vader appears happy to interact with Jasper, the meeting quickly becomes violent as Jasper attacks Vader and tries to bite him. Both dogs are of medium build and approximately equal in size.
5. As the Tenant pulls Vader on his leash away from the attack, PD approaches Jasper from behind, pulls him away by his tail and reattaches his leash to the fence. There is no dispute that the only injuries Vader suffered were from the spikes on his own collar as the Tenant was pulling him away from the attack.
6. There is no dispute that, following this attack, the Tenant brings Vader to the rental unit and leaves him there while he returns to the parking lot. The Landlord's video surveillance (**Video #2**) shows that PD is back under his car conducting repairs while the Tenant reappears in the parking lot and sits on the curb next to PD's car. The next video footage (**Video #3**) shows the Tenant speaking to PD at length and then standing and yelling at PD (who is still under his vehicle) and then leaving the parking lot for a second time.
7. The Tenant says he was asking PD to take better care of ensuring Jasper was properly tied to the fence and asking him if Jasper was completely vaccinated. There is no dispute that PD refused to acknowledge the Tenant, refused to answer his questions and instead just told him to go away. There is also no dispute that the Tenant became increasingly frustrated and angry at this point.
8. The Landlord's video surveillance (**Video #4**) shows the Tenant returning to the parking lot and marching back to PD's car where he begins yelling at PD, repeatedly pointing his finger at him while PD is on the ground under his car. The Tenant's body language appears extremely aggressive and it is clear that he is yelling at PD. The Tenant then violently kicks one of the car doors closed and continues to yell at PD.
9. There is no dispute that, at this point as PD comes to a standing position, the Tenant grabs a tire iron from the ground, strikes at the back of PD's knee with the tire iron, pushes him to the ground and then kicks PD twice while he is on the ground.
10. After PD stands up again, he lunges towards the Tenant and the two begin wrestling each other and eventually end up on the ground. Two bystanders from the parking lot then run towards the men and pull them apart while a third bystander runs over to assist. Eventually, PD returns to his position under his car while the Tenant can be seen yelling at the three bystanders and then vomiting several times in the parking lot.

11. Based on the video surveillance footage and the undisputed evidence before me, I find that the Landlord has provided sufficient evidence to establish that the Tenant seriously impaired the safety of PD on May 20, 2024 when he struck him with a tire iron, pushed him down and kicked him twice while he was on the ground. This conduct occurred at the residential complex.
12. Not only does the Tenant admit to these allegations, but the video evidence clearly shows that Tenant's physically assaulted PD in this manner. For these reasons, I find that the Landlord has proven the allegation contained in the N7 notice and has established that the has seriously impaired the safety of a person at the residential complex.

Relief from Eviction

a) The Nexus Issue

13. The Tenant says that, if the Landlord's application is granted, a conditional order is warranted in order to accommodate the Tenant under Ontario's *Human Rights Code*, R.S.O. 1990, c. H.19 (the 'Code'). For the following reasons, I agree with the Tenant's position on this point.
14. As the Tenant has raised the issue of accommodation under the Code as part of his circumstances, the first issue before me is whether there is a nexus between the Tenant's disabilities and his behaviour of physically assaulting PD with a tire iron. In other words, is there evidence to support the assertion that there is a connection between the Tenant's disabilities and the basis for the eviction? For the following reasons, I find that there is sufficient evidence to establish a nexus between the Tenant's disabilities and the conduct at issue in this application.
15. First, I would note that the Tenant's legal representative failed to properly introduce the Tenant's medical evidence during his direct examination at the hearing. Although the Tenant's legal representative says that he uploaded his evidence package to the Portal prior to the hearing, it did not appear in the Portal during the hearing and the first indication that the Tenant wanted to admit any medical evidence came during his legal representative's closing submissions. The Landlord's legal representative then emailed the Tenant's evidence package directly to me and I viewed the documents during the Tenant's closing submissions. As the medical documents were not introduced through a witness, they were not subject to cross examination by the Landlord.
16. However, the Landlord did not raise any objections to having the medical documents introduced and the Landlord made submissions by way of reply regarding the Tenant's medical disabilities during their closing arguments.
17. The Tenant's medical documents indicate that the Tenant has polysubstance abuse disorder and a personality disorder which results in erratic behaviour, anger management

issues¹, as well as problems with emotional dysregulation², impulsivity and reactivity³. The documents describe in detail the Tenant's difficulties in "working with others" and explain that he is "completely unable" to have successful social interactions including "maintaining social boundaries⁴".

18. It is clear from these descriptions that, not only does the Tenant have anger management issues, but he is unable to regulate his emotions and establish sufficient boundaries to prevent his outbursts.
19. I would also note that, during the hearing, the Tenant displayed his difficulties with anger management. For example, during the Landlord's testimony, the Tenant could be seen on camera yelling at the screen and gesturing aggressively in response to what he was hearing. Also, during his own testimony, the Tenant was often aggressive in his answers and adamant that he was justified in his response to the dog attack and to PD ignoring him while he was yelling at him in the parking lot. The Tenant's conduct at the hearing confirms the findings in his medical evidence that he becomes easily emotionally dysregulated and he is unable to control his aggressive outbursts.
20. I would also note that, even though the Tenant had Vader at his side during the entire hearing and even though Vader is the medical prescribed "emotional support pet" that his doctor has suggested⁵, the Tenant was unable to control his aggressive tendencies as well as his frustration during the Landlord's testimony and his own testimony. This suggests to me that, even with the presence of his emotional support pet, the Tenant is largely unable to control his behaviour and is frequently aggressive and angry.
21. Based on the evidence before me, I am satisfied that there is a nexus between the Tenant's disabilities and his physical assault of PD in the parking lot. The Tenant has anger management issues that severely impact his ability to control his behaviour and regulate his emotions. Even though the Tenant takes medication to treat some of his symptoms, the majority of the medical documentation clearly confirms that he becomes easily emotionally dysregulated, he has severe difficulty with social interactions and is incapable of maintaining social boundaries.
22. . Based on the medical evidence, the video evidence, the Tenant's conduct at the hearing, and his own description of his emotions at the time, I am satisfied that there is a nexus between the Tenant's disabilities and his physical assault of PD in the parking lot.

b) The Duty to Accommodate

23. As the Tenant's disabilities are related to the behaviour that could result in eviction, the Landlord has a positive duty to accommodate the Tenant to the point of undue hardship.

¹ See Tenant's evidence package, page 13

² See Tenant's evidence package, page 16

³ See Tenant's evidence package, page 10

⁴ See Tenant's evidence package, page 21

⁵ See Tenant's evidence package, page 23

24. The Code is quasi-constitutional legislation. It takes precedence over the *Residential Tenancies Act, 2006* (the 'Act') just as the Act takes precedence over the Landlord's rules. Section 17 of the Code sets out the duty to accommodate people with disabilities. It is not discriminatory to refuse housing to a person because they are incapable of fulfilling the essential requirements of their tenancy. However, a person will only be considered incapable if their disability-related needs cannot be accommodated without undue hardship. For the following reasons, I am not satisfied that the Landlord has accommodated the Tenant to the point of undue hardship.
25. First, I am satisfied that the Landlord knew, or ought to have known, that the Tenant suffers from various disabilities. I say this because the Landlord's witness, 'TM', says that, after the parking lot incident, one of her staff made sure that the Tenant was seeing his physician. TM says they take this step "automatically as part of [their] incident reports". This suggests to me that the Landlord knew that the Tenant was seeing a doctor and therefore knew that the Tenant likely experiences a disability. This is particularly true as the Landlord is a social housing provider whose clientele is made up almost entirely of individuals with disabilities. As the Landlord was aware that the Tenant was experiencing a disability, I find that the duty to accommodate is engaged here, but the Landlord failed to accommodate the Tenant to the point of undue hardship.
26. I say this because, even though the Landlord is a social housing provider, the only offer they made to accommodate the Tenant occurred when he initially moved into the rental unit in November 2023. According to TM, when a new tenant moves in, the Landlord routinely makes a general offer to provide any support they may need and/or refer them to any support worker or service they may require. At the time the Tenant moved in, he already had a treating physician and he was already taking his required medication. This meant that the Tenant did not require any additional accommodation when he moved in.
27. However, even after the Landlord thoroughly investigated the incident in the parking lot, they failed to make reasonable inquiries to determine whether the Tenant required any accommodation. For example, the Landlord failed to offer a referral to a counselling service who could assist the Tenant with the emotions he experienced as his emotional support dog was being attacked. The Landlord failed to offer a plan for keeping Jasper and Vader separated to avoid any future confrontations. The Landlord failed to offer to refer the Tenant to counselling to deal with the fallout from his violent outburst or to help him process his aggressive emotions as a result of the attack and PD ignoring him. The Landlord failed to engage the Tenant on any of these issues.
28. Typically, in these kinds of situations, even if a social housing provide does not have support services onsite, they often put in writing an offer to accommodate the tenant in the form of referrals to outside services or resources that they can make available to the tenant. In the matter before me, none of these offers of assistance were made to the Tenant. This is despite the fact that TM says the Landlord has social workers on staff who rotate through all of the properties offering assistance as required to the residents. As I am satisfied that the Landlord was aware of the Tenant's disabilities but failed to offer to accommodate the Tenant in any way or at least investigate to determine whether accommodation was required, I find that the Landlord has not fulfilled their duty under the Code to provide accommodation up to the point of undue hardship.

29. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the Landlord's failure to meet its obligations under the Code, and I 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.
30. I say this because the Tenant appears to understand that he should not have physically assaulted PD and he appears remorseful in this regard. The Tenant apologized for his actions at various points during his testimony and he says he has apologized to PD. Also, although the Tenant may require some ongoing therapy to process the emotions he experienced in the parking lot, I am satisfied that the assault was an isolated incident and the Tenant was provoked by his dog being attacked and PD's failure to answer his questions. I say this because there is no evidence before me that the Tenant has physically assaulted anyone else since he moved into the unit in November 2023 and he has not assaulted anyone since the May 2024 incident.
31. I am also satisfied that the Tenant is highly motivated to preserve his tenancy as he is living in subsidized housing and has no alternatives regarding any form of housing if this tenancy were to terminate. However, I have also considered the need to ensure that the Tenant does not engage in further such serious conduct in the future, which means that a conditional order is required in order to protect the health and safety of other residents. For all of these reasons, I am satisfied that the Tenant is able to adhere to a conditional order and it would not be unfair to grant relief from eviction in this way.
32. This order contains all of the reasons within it and no further reasons will be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenant will continue, provided that the Tenant adheres to the following conditions:
 - For a period of one year from the date this order is issued, the Tenant shall not engage in any physical altercations with any resident, occupant, or guest of the residential complex; and
 - For a period of one year from the date this order is issued, the Tenant shall not have contact with PD at or outside the residential complex, except for any necessary incidental contact that may arise as a result of the fact they live in the same residential complex.
2. If the Tenant fails to adhere to any of these conditions, the Landlord may, without notice to the Tenant, apply to the Board pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant. The Landlord must make this application no later than 30 days after the Tenant's breach of this order.

August 22, 2024
Date Issued

Laura Hartslief
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.

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