



**Order under Section 69 / 89  
Residential Tenancies Act, 2006**

**Citation:** Toronto Community Housing Corporation v Berry, 2024 ONLTB 1146

**Date:** 2024-01-10

**File Number:** LTB-L-006796-23

**In the matter of:** 17, 41 D'ARCY ST TORONTO  
ON M5T1J8

**Between:** Toronto Community Housing Corporation Landlord

**And**

William Berry Tenant

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

- the Tenant or another occupant of the rental unit has committed an illegal act or has carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential complex;
- 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 Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully caused undue damage to the premises.

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

Toronto Community Housing Corporation (the 'Landlord') also applied for an order requiring William Berry (the 'Tenant') to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

This application was heard by videoconference on December 11, 2023 at 1:00 pm.

The Landlord Representative Travis King, the Tenant Representative Michael Pilieci and the Tenant attended the hearing.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application.
2. On January 13, 2023, the Landlord gave the Tenant N6 and N7 notices of termination (N6, N7 Notice) deemed served on January 18, 2023. The notices of termination both contain the following allegations:
  - a. On October 27, 2022, following a verbal dispute with the tenant in unit 16, the Tenant was seen exiting the rental unit with a short metal rod and began striking the door of unit 16. The Tenant then left, returning with a large yellow crowbar and resumed striking the door to unit 16 unit the door broke in half;
  - b. On November 19, 2022 at approximately 12:33 am, following the community safety unit reporting a fire alarm in the rental complex, Special Constable Glover (S/Cst Glover) arrived at the rental complex and was informed by Toronto Fire, that the alarm was triggered by a pull station being activated. Having left the scene to review the CCTV footage, S/Cst Glover observed a male walking down the stairs from third floor to the second floor, opening g the door about an inch, reaching out and pulling the pull station before proceeding back upstairs. While reviewing this footage a second fire alarm went off; and
  - c. On November 19, 2022, at approximately 1:40 am Special Constable Durkin (S/Cst Durkin) was dispatched to the rental complex for a second fire alarm. While on the scene S/Cst Durkin was contacted by S/Cst Glover called advising him that the tenant in unit 17 was the individual who pulled the alarm both times. Arriving to the third floor S/Cst Durkin encountered the Tenant as they were exiting the unit, called S/Cst Glover to confirm it was the same individual before placing the Tenant under arrest for False Fire Alarm.
3. The Landlord filed their application on January 20, 2023.
4. As of the hearing date, the Tenant was still in possession of the rental unit.
5. The lawful rent is \$448.00. It is due on the 1st day of each month.
6. Based on the Monthly rent, the daily rent/compensation is \$14.72. This amount is calculated as follows: \$448.00 x 12, divided by 365 days.

7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.

Landlord testimony and evidence

October 27, 2022

9. In support of the events of October 27, 2022, the Landlord Representative submitted into evidence CCTV footage of the incident. The footage clearly shows the Tenant dressed in their underwear, exiting the rental unit, banging on the door to unit 16 with a small metal rod before returning to their unit, retrieving a large yellow crowbar and proceed to bash in the door of unit 16.
10. Special Constable Haque (S/Cst Haque) testified to having been employed by Toronto Community Housing Corporation (TCHC) for 21/2 years. He also testified to receiving the report about damage to the door of unit 16 on October 28, 2022. Reviewing the CCTV footage, he observed the events as alleged in N6 Notice. Following this he attended the rental complex where while interviewing the Tenant, the Tenant stated that he had damaged the door after the tenant in unit 16 told him to "fuck off." Following this he arrested the Tenant for Mischief, Assault with weapon or bodily harm, Possession weapons dangerous and turned them over to Toronto Police Services 52 Division. However, following this the Tenant was released for "insufficient evidence." This was supported by occurrence report #1225322 entered in evidence. It was also his testimony that the Tenants behaviour of October 27, 2022, was alarming and had a detrimental affect on the residents and the rental complex as a whole.
11. On cross examination, S/Cst Haque testified that while reviewing the footage he did see the Tenant talking with the tenant in unit 16 prior to the incident, but there was no audio to determine what was said. He also testified to having never been called to unit 16 before. It was also his testimony that he believed the Tenant intended to injure the tenant in unit 16. He also testified that the Tenant was compliant when he interviewed and arrested him.

November 19, 2022

12. S/Cst Glover testified that he has been employed with TCHC for over two years and having responded to the first reported fire alarm on November 19, 2022 and that Toronto Fire Services informed him that the alarm was caused by a pull station being activated. He also testified to reviewing the CCTV footage and having observed an individual exit unit 17, proceed down the stair well, open the door to the second floor then see a hand reach out and trigger the pull station. He also testified to directing S/Cst Durkin to the third floor after the second alarm went off and to confront the Tenant as the individual responsible. This was supported by a copy of report # 1231064 entered in evidence.

13. On cross examination S/Cst Glover testified that they hadn't provided the footage from November 19, 2022. He also confirmed that the tenant in unit 16 had a history of pulling fire alarms.
14. S/Cst Durkin's testimony corroborated that of S/Cst Glover, to include that he was the one to arrest the Tenant for Fire Alarm False. This was also supported by a copy of report # 1231079 entered in evidence.
15. On cross-examination S/Cst Durkin confirmed he had been called to the rental complex before for fire alarms but couldn't recall who had been deemed responsible. He also testified that one could easily reach the pull station on the second floor from the stairwell. He also testified the Tenant cooperated during his interview and after he was arrested.
16. Tanisha Allen testified to being the tenancy manager since April 2023 and having been employed by TCHC since 2013. She also testified to being aware of the Tenant being provided with the complaints as alleged in the N6, N7 Notices. She also testified that the damaged door was a fire door and had to be completely replaced at a cost of \$2,204.00.  
  
This was supported by a work order and receipt entered in evidence. It was also her testimony that the Tenant's actions had placed the other residents on edge and that despite the Tenant having lived in the rental complex since 2008, terminating the tenancy was necessary given the violent nature of the Tenant's actions.
17. On cross examination she testified that the tenant in unit 16 had moved into the complex in 2017 and the tenancy has been problematic, including some property damage issues. However, she also testified to having no record of the Tenant filing any complaints regarding the tenant in unit 16.

Tenant testimony and evidence.

18. The Tenant testified that he is 64 years old and works part time as a handy man. He denied pulling the fire alarms, stating that he believed that the tenant in unit 16 was responsible. He also testified to having attended anger management courses in the past and would be willing to attend again if required.
19. Regarding the events of October 27, 2022, he didn't deny the Landlord's allegations, testifying that he was provoked by the actions of the tenant in unit 16. He testified that the tenant in unit 16 had a history of banging and making loud noises in the middle of the night and that several other tenants had complained. He admitted what he did was wrong, stating he grabbed the crowbar as it was readily available inside his unit. He also testified that he had no intent of harming the tenant in unit 16 and that he was prepared to pay for the damages he caused in order to maintain the tenancy, and despite having several siblings, had no place else to go.
20. Lawrence Dygras testified to having employed the Tenant for several years to conduct maintenance on his rental properties. He testified the events of October 27, 2022, were not characteristic of the Tenant and he believed the Tenant had been provoked. He also

testified to an incident the year prior, when out with the Tenant they encountered an individual at a gas station who began yelling and threatening the Tenant.

21. Stephanie Grisafi testified to being the Tenant's case worker since December 2022 following the completion of her education 2 months prior. She testified that the Tenant was always punctual and professional and that on several occasions he complained about the tenant in unit 16.
22. Nesiah Ouanounou testified that she has known the Tenant for several years, and that the events of October 27, 2022, were out of character for him. She also testified to employing him as a handyman, that she would be prepared to cover the costs for the damage caused and that she believed that the Tenant wouldn't survive if evicted.

#### Final submissions

23. The Tenant Representative submitted that the Landlord had failed to establish on the balance of probabilities that the Tenant was responsible for the false fire alarms on November 19, 2022. As to the events of October 27, 2022, it was his submission, as supported by the Tenant's witnesses, that those actions were not indicative of the Tenant's character. Accordingly, for these reasons, and the fact the Tenant was prepared to pay for the damages, with help from his friends, and given the length of time he has lived in rental complex, that a conditional order was warranted.
24. The Landlord Representative submitted that they had established on the balance of probabilities that the Tenant was responsible for the false fire alarms on November 19, 2022. Regardless, even if the Board does not find that was the case, it was undisputed that the Tenant did break down the door of unit 16 on October 27, 2022. Furthermore, the Tenant's actions that night, namely the initial attempted entry with the metal bar and subsequent success with the crowbar, clearly demonstrated a lack of control and a present and real impairment of safety to the Landlord and other tenants.
25. Accordingly, the Landlord Representative requested that I consider the welfare of the community, and not just the Tenant's right to relief from eviction. In support of this he referred to the following Divisional Court cases:
  - a. *Metropolitan Toronto Housing Authority v Owusu-Ansah*, [1995] OJ No 3864 paragraph 85;
  - b. *Joseph v. Toronto Community Housing Corporation*, [2013] ONSC 413, paragraph 8;
  - c. *Hassan v Niagara Housing Authority*, 48 RPR (3d) 297, paragraphs 17,20 and 21; and
  - d. *Furr v. Courtland Mews Cooperative Housing Inc.*[ 2020] ONSC 1175 paragraph 17.

*Analysis*

26. The following sections of the Residential Tenancies Act, 2006 (the “Act”) are relevant to this application:

**61** (1) A landlord may give a tenant notice of termination of the tenancy if the tenant or another occupant of the rental unit commits an illegal act or carries on an illegal trade, business or occupation or permits a person to do so in the rental unit or the residential complex.

**66** (1) 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.

**75** The Board may issue an order terminating a tenancy and evicting a tenant in an application under section 69 based on a notice of termination under section 61 whether or not the tenant or other person has been convicted of an offence relating to an illegal act, trade, business or occupation.

Illegal act and impairment of safety.

27. Based on the testimony and evidence presented I am satisfied that the Tenant committed an illegal act when they broke down the door to unit 16 with the crowbar and that by doing so they also seriously impaired the safety of other persons. Furthermore, I am also satisfied that this act occurred in the residential complex. The Tenant’s assertion that he only did this because he was somehow provoked by the Tenant in unit 16 does not excuse or justify his conduct.

28. Similarly, I am also satisfied that the Tenant was responsible for the false fire alarms of November 19, 2022. Although I acknowledge the Tenant denied the allegation, I found the combined testimony of S/Cst’s Durkin and Glover more credible and reliable given the details they provided such as the movements observed on camera, the timing and location of the Tenant.

Compensation for damages

29. Based on the evidence and testimony presented I am satisfied that the Tenant, willfully caused undue damage to residential complex by breaking down the door to unit 16.

30. The Landlord has incurred reasonable costs of \$\$2,204.00 to replace property that was damaged and cannot be repaired.

Relief from eviction

31. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and although I acknowledge the arguments made by the Landlord Representative and the legal submissions submitted to support the termination of the tenancy, I am satisfied, for the following reasons, it would not be unfair to grant relief from eviction.
32. First, I am not beholden to decisions of other members. In all the cases presented the argument put forward pertained to the forfeiture of relief in favour of the community as a whole. However, there are some fundamental differences between the cases presented and the one before me. In *Metropolitan Toronto Housing Authority v Owusu-Ansah*, [1995] OJ No 3864 the Tenant was found guilty of drug trafficking and had been sentenced to a term of incarceration. In the case before me Toronto Police Services refused to press charges over insufficient evidence.
33. Secondly in *Hassan v Niagara Housing Authority* 48 RPR (3d) 297, it was determined that there were no grounds for the tribunal to find the Landlord took reasonable steps and that the Landlord's actions had no affect on the Tenant. In contrast, as there is no evidence that there has been any further incidents involving the Tenant since those at issue in the hearing suggests to me that the Landlord's actions did have an affect.
34. Finally, I take note of the fact that the Tenant seemed genuinely remorseful, and his witnesses all maintained the events of October 27, 2022, were not indicative of his character. Furthermore, given there hasn't been a repeat incident since the Tenant was presented with the Notices of Termination, as noted above, I am satisfied that they have had the desired affect. Finally, I am also satisfied that the prejudice to the Landlord and the other residents arising from a conditional order is adequately addressed by the fact the Landlord will be able to apply for an immediate termination of the tenancy should the Tenant fail to abide by any of the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

**It is ordered that:**

1. For the remainder of the tenancy the Tenant shall abide by the following conditions:
  - a) The Tenant shall not engage in any verbal altercation with other tenants or agents of the landlord on the residential complex to include, but not limited to, yelling, cursing, threatening.
  - b) The Tenant shall not engage in any physical altercation with any other tenants or agent of the Landlord on the residential complex.
  - c) The Tenant shall not store any construction tools in the rental unit to include but not limited to the following groups: striking tools, cutting tools, boring tools, torsion tools, measuring tools and holding tools.

- d) The Tenant shall not use any of the tools outlined in paragraph 3 in the rental unit or on the rental complex property.
2. The Tenant shall pay to the Landlord \$2,204.00, which represents the reasonable costs of replacing the damaged property.
  3. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
  4. The total amount the Tenant owes the Landlord is \$2,390.00.
  5. If the Tenant shall pay the Landlord the full amount owing on or before February 29, 2024.
  6. If the Tenant fails to make the payment in accordance with this order or fails to abide by any of the conditions set out in paragraphs 1-4 the Landlord may, without notice to the Tenant, apply to the LTB within 30 days of the Tenant's breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant.

**January 10, 2024**

**Date Issued**

Kelly Delaney

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.