



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

Citation: CityHousing Hamilton Corporation v Al-Kaabi, 2024 ONLTB 62061

Date: 2024-08-23

File Number: LTB-L-005809-24

In the matter of: 1804, 181 JACKSON ST W
HAMILTON ON L8P1L8

Between: CityHousing Hamilton Corporation Landlord

And

Mahammad Al-Kaabi Tenant

CityHousing Hamilton Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Mahammad Al-Kaabi (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; and,
- 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 July 30, 2024.

The Landlord's Legal Representative, Vladimir Molatchenko, Property Manager, Shauna Wheeler, and the Tenant attended the hearing.

It is determined that:

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. Therefore, the tenancy shall terminate on September 30, 2024.
2. The L2 application before the Board is on N6 and N7 notices of termination. The building, commonly known as Vanier Towers, is a high-rise which is operated by the City of Hamilton. Most of the tenants are single people, but there are some families as well.
3. On January 10, 2024, the Landlord gave the Tenant an N6 and N7 notices of termination deemed served January 15, 2024. Both notices refer to the same allegation that on September 4, 2023, at approximately 12:00 p.m., the Tenant assaulted another tenant, known as "John" at the rental complex.

4. The Tenant was required to pay the Landlord \$3,290.36 in daily compensation for use and occupation of the rental unit for the period from February 10, 2024, to July 30, 2024, less any amounts already paid by the Tenant to the Landlord.
5. Based on the Monthly rent, the daily compensation is \$19.13. This amount is calculated as follows: \$582.00 x 12, divided by 365 days.
6. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
7. There is no last month's rent deposit.

N6 & N7 NOTICES OF TERMINATION

8. This application associated with the N6 notice is made under s. 61(1) of the *Residential Tenancies Act* (the 'Act'), which states:

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.

9. The N6 notice alleges that the Tenant, contrary to s. 267 of the *Criminal Code*, assaulted another individual at the rental complex. Section 267 of the *Criminal Code*, states:

Assault with a weapon or causing bodily harm.

267 Every person is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years or is guilty of an offence punishable on summary conviction who, in committing an assault,

- (a) carries, uses, or threatens to use a weapon or an imitation thereof,
- (b) causes bodily harm to the complainant, or
- (c) chokes, suffocates, or strangles the complainant.

10. This application associated with the N7 notice is made under s. 66(1) the Act, which states:

(a) (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.

[Emphasis added]

11. The Landlord's Property Manager testified that she has been the property manager of the building for 12 years. She states that on September 30, 2023, another tenant from the building, came into the lobby and was bleeding from his head. John told the security guard that he had been attacked by the Tenant who had struck him with a chain-style dog leash. John told the security guard that the attack on him was unprovoked, but that he did not wish the Tenant to face any charges. John attended the hospital and received several stitches.
12. In support of the Property Manager's testimony, several pieces of evidence were submitted to the Board. A copy of the incident report taken by the security guard on the date of the incident states that the location of the incident was the back patio, and that John came in from outside with his head bleeding. John told security he needed paramedics and police. John states the "guy with two German shepherd [sic] hit him in the head."
13. A still frame photo of John at the security desk was attached to the report. The photo shows John wearing a baseball cap and with blood running down the right-hand side of his face near his ear.
14. A video of the incident was also submitted into evidence. The video does not contain any audio. The video is approximately six seconds long. It depicts a paved patio area with picnic tables. The video shows a party of three individuals sitting at a picnic table. The Property Manager testified that she recognized the Tenant when reviewing the video of the incident. John approaches from the right-hand side of the screen, walking towards the three people at the picnic table. John appears to be approximately six metres away from Tenant. The Tenant gets up from the table, and quickly rushes towards John and strikes him with a dog leash. John turns away presumably to try to avoid being hit.
15. After this incident, the Property Manager told the Board that John asked to be moved to another building because he feared repercussions from the Tenant. She states that police had called and indicated that criminal charges were being laid against the Tenant although she did not have any further information about that. She also told the Board that she spoke with John after the incident and was able to confirm the details found in the incident report and his injuries.
16. The Property Manager also testified about other individuals who have had negative interactions with the Tenant. However, as those interactions are not claimed on the notices, I have not included these incidents in my deliberations.
17. In cross-examination, the Tenant asked the Property Manager if she was aware of who the other individuals at the picnic table were. She indicated she was not. However, the Property Manager was aware of the Tenant because of other incidents involving him. The Tenant also put to the Property Manager whether there had been a previous incident between them. She answered that there had been an incident where the Tenant had "come after me in the lobby."
18. He says that John had been bothering the trio at the picnic table, and that one of the individuals at the table is pregnant. He told the Board that this was self-defense because John was bothering the others at the picnic table by "screaming" at them and that he was

“very aggressive” and “on drugs and medication.” He testified that the “girls” at the picnic table were scared. He also told the Board that the attack on John was an “accident,” and it was just a “little scratch” on John’s ear, and that it was not a chain leash, but a leather leash that he used to strike John. I do not make a finding regarding the construction of the leash.

19. The Tenant also alleges that the eviction was retaliatory because of the incident in the lobby between the Property Manager and himself. He states that he was not criminally charged. Lastly, he told the Board that John has since been evicted since the incident and implied this was due to John’s behaviour.
20. In reply, the Property Manager explained that John was a little unusual. However, it was her opinion that John was not a person who behaved in a threatening or aggressive manner. She also told the Board that John had been evicted, but his eviction was not due to any behavioural reasons, but for non-payment of rent. She also stated that she was not aware that John had a substance abuse problem nor how the Tenant would know whether or not John took medication.

ANALYSIS

21. In reviewing the evidence, I prefer the evidence of the Landlord. This is because the video does not support the Tenant’s version of events. Because there is no audio, I cannot evaluate whether John had been screaming as the Tenant alleges. However, when I review the video, I do not see any aggressive behaviour on behalf of John. John gets no closer to the picnic table than approximately six meters, or about twenty feet, away. Further, the Tenant’s evidence is contradictory. He states that this was self-defense, but also that John was bothering them, and that it was an accident. These things cannot all be true. The Tenant also says that it was “just a scratch”, however, the evidence indicates that John had to attend the hospital for stitches. In my view, the video, incident report, and photo demonstrate the assault on John and his injuries.
22. Further I do not find that the notices were served because of retaliation against the Tenant for the incident involving the Property Manager in the lobby. The Tenant did not provide any evidence, beyond his oral testimony, to support this allegation. Further, as these incidents – that being the lobby incident and striking John with the dog leash - are not linked in any way, I do not see any correlation between them.
23. With regard to whether the Tenant was criminally charged or not, this need not form part of my deliberations. I say this because s. 61(1) and 66(1) of the Act, upon which this application is based, do not require criminal charges be laid in order to give the notices or file an application with the Board.
24. Therefore, I find that the Landlord on a balance of probabilities has demonstrated that the Tenant has committed an act in the residential complex which has seriously impaired the safety of another person. Further, I find that this act took place at the rear of the residential complex.

25. As I find the Landlord has met their burden of proof pursuant to s. 61(1) of the Act, I do not make any findings pursuant to s. 66(1) of the Act.

RELIEF FROM EVICTION

26. 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 postpone the eviction until September 30, 2024, pursuant to subsection 83(1)(b) of the Act. The Tenant requests one year to find alternate housing; the Landlord requests 30 days.

27. The Tenant states that he suffers from a brain injury. He also says he has animals and is taking of his mom who lives with him. He says he is awaiting a surgery date, although the Board is unclear what the surgery relates to, but that this date has not yet been set.

28. The Landlord states that the Tenant has the means and capabilities to move. Further, the Tenant poses a continued risk to the other occupants in the building.

29. Given the circumstances, I find that a short delay in eviction is appropriate. This will allow the Tenant some time to find alternate housing, while reducing any further prejudice to the Landlord.

30. This Order contains all of the reasons within it. No other order shall issue.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before September 30, 2024.
2. If the unit is not vacated on or before September 30, 2024, then starting October 1, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after October 1, 2024.
4. The Tenant shall pay to the Landlord \$3,290.36, which represents compensation for the use of the unit from February 10, 2024, to July 30, 2024, less any amounts already paid by the Tenant to the Landlord.
5. The Tenant shall also pay the Landlord compensation of \$19.13 per day for the use of the unit starting July 31, 2024, until the date the Tenant moves out of the unit.
6. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
7. The total amount the Tenant owes the Landlord is \$3,476.36, less any amounts already paid.
8. If the Tenant does not pay the Landlord the full amount owing on or before September 30, 2024, the Tenant will start to owe interest. This will be simple interest calculated from October 1, 2024, at 7.00% annually on the balance outstanding.

August 23, 2024
Date Issued

Jane Dean
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.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on April 1, 2025 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.