



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

**Citation:** Haldimand-Norfolk Housing Corporation v Thain, 2024 ONLTB 62197

**Date:** 2024-09-04

**File Number:** LTB-L-036962-24

**In the matter of:** 204, 68 SELKIRK ST  
CALEDONIA ON N3W1L9

**Between:** Haldimand-Norfolk Housing Corporation Landlord

**And**

Philip Thain Tenant

Haldimand-Norfolk Housing Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Philip Thain (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 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 13, 2024. The Landlord's agent, Trisha Feist, and the Landlord's representative, Paul Startek, attended the hearing. The Tenant and the Tenant's representative, Ian Aitken, also 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. Therefore, the tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before September 15, 2024.

**N6 Notice of Termination – Illegal Act**

2. On March 26, 2024, the Landlord served the Tenant an N6 Notice of Termination (N6). The N6 alleges that on January 19, 2024, between 6:50 pm and 7:00 pm, the Tenant entered unit 208 and struck tenant Heather Brown in the head several times with his fist causing her to lose consciousness. The Tenant then entered the second-floor hallway and slammed tenant Liza Schryer's head against the wall and then stomped with his foot on her body twice. The Tenant then grabbed tenant Schryer by the hood and slammed her head against the hallway wall.

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3. The N6 further notes that the Tenant was charged later that day on January 19, 2024, by the Ontario Provincial Police (OPP), for two counts of assault, for assaulting Heather Brown and Liza Schryer, as defined under section 265(1)(A) of the Criminal Code, and contrary to section 266 of the Criminal Code.

#### Landlord's Evidence

4. The Landlord's agent Trisha Feist testified that on January 19, 2024 the duty manager for the residential complex received a pager call from the OPP regarding an incident that had taken place in the residential complex on the evening of January 19, 2024. She remarked that the OPP were investigating assaults that occurred against Heather Brown, the tenant who resides in unit 208, and on Liza Schryer, the tenant who resides in unit 205. The Landlord's agent testified that she provided the OPP with video footage of the assault, captured by a camera located on the second-floor hallway of the residential complex. The Landlord submitted this video footage to the Board.
5. The video depicts the Tenant forcefully kicking the door of unit 208 and then entering unit 208 while Liza Schryer was standing in the second-floor hallway. When Liza Schryer attempted to enter unit 208, the Tenant punched her in the face, threw her against the hallway wall, forcefully stomped on her twice with his foot while she was laying on the hallway floor, picked her up, slammed her body against the wall, returned into unit 208, shoved Liza Schryer into unit 208, and then left the unit.
6. Tenant Liza Schryer testified that during the Tenant's assault on January 19, 2024, she was trying to assist tenant Heather Brown. She explained that the Tenant was hitting Heather Brown in her face, and when the Tenant did not stop hitting her after she said "stop, stop", she went into Heather Brown's unit and tried to intervene, but that is when the Tenant assault her in the hallway. Ms. Schryer testified that she did not do anything to provoke the Tenant to attack her. Ms. Schryer asserted that she had previous abusive partners, and the Tenant's assault on her reawakened these feelings. She added that she would not feel safe if the Tenant returned to live in the building; she would not be able to enjoy residing in the building and in her unit.
7. Tenant Heather Brown testified that on the evening of January 19, 2024, the Tenant kicked in her unit 208 door, and punched her in the head several times. Ms. Brown stated that she lost consciousness, fell to the floor, and when she regained consciousness, she seen the Tenant punching Liza Schryer in the hallway outside her unit door. Ms. Brown asserted that she did not do anything to provoke the Tenant's attack, she did not have a knife in her possession during the attack, and the Tenant never mentioned on January 19, 2024 that his vehicle tires had been slashed.
8. Ms. Brown testified further that as a result of the assault she may have to undergo eye surgery, her neck is damaged, and she suffers frequent migraines. Ms. Brown remarked that the Tenant invaded her home, and then assaulted her; therefore, it would be horrible if the Tenant was allowed to return to live in the residential complex.
9. The Landlord's agent testified further that on January 19, 2024, the OPP charged the Tenant with two counts of assault, for assaulting Heather Brown and Liza Schryer, as defined under section 265(1)(A) of the Criminal Code, and contrary to section 266 of the Criminal Code. The agent stated that a Court Release Order released the Tenant to reside

at his parent's home and to remain more than 100 meters from the two assault victims and the residential complex until the Tenant's next court appearance. The Landlord submitted a copy of the Court Release Order, dated January 23, 2024.

10. The Landlord's agent stated that after the assault, but before the Landlord served the N6, she received an email from the Tenant on February 12, 2024, stating that he has a bipolar disorder and should not be evicted as a result of his mental illness. She added that the Tenant also sent her emails on February 26, 2024, and on March 11, 2024, advising her of his mental issues, and requesting a transfer to another residential complex operated by the Landlord. The agent asserted that given the violent nature of the assault, the possibility of a recurrence of this incident, and the Landlord's obligation to provide tenants with safe residences, the Landlord did not offer the Tenant another unit in the residential complex, or in another residential complex operated by the Landlord. The agent remarked that the Landlord provides residences for many vulnerable adults, including those fleeing domestic violence.
11. The Landlord's agent explained that in an effort to determine to what extent the Tenant's mental condition contributed to the assaults on January 19, 2024, the Landlord sent a letter to the Tenant on February 22, 2024, requesting the Tenant have his physician answer nine questions related to the Tenant's mental health. The Landlord submitted a copy of the letter sent to the Tenant, as well as his physician's responses.
12. The Tenant's physician responded that the Tenant suffers from situational stress that often impairs his mood control, and that this was the cause of the Tenant's conduct on January 19, 2024. When asked about how the Tenant's impairment could be accommodated to allow him to reside without incident in the residential complex, the physician responded, "*With reduced situational stress and with reduced provocation there should be no problem*". The physician stated further that the Tenant has been compliant with all medical treatments. When questioned about the possibility of a recurrence of the incidents on January 19, 2024, the physician remarked, "*It is hard to say. Each situation may play out differently*".

#### Tenant's Evidence

13. The Tenant testified that on January 19, 2024, he hit Heather Brown and Liza Schryer in self-defense, after being punched in the face by Ms. Schryer, and believing that both women had knives. The Tenant explained that a week before the January 19, 2024 incident, his vehicle tires were slashed a second time at the residential complex, and Liza Schryer, who he had a previous relationship with, advised him that Heather Brown had slashed his tires. The Tenant asserted that this provocation contributed to the incident he had with these two women on January 19, 2024. The Tenant remarked that he is sorry that Ms. Brown and Ms. Schryer were hurt; he is ashamed of his actions; and he wants the women to get well. The Tenant asserted further that he is not a violent person.
14. The Tenant testified that in October 2023 he was diagnosed with bipolar disorder and was put on anti-psychotic medication; however, during his relationship with Ms. Schryer she manipulated him to take and use his medication. He remarked that he gets anxious, but his medication helps. The Tenant acknowledged that at the time of the incident on January 19, 2024, he was not compliant in taking his medication because Ms. Schryer stole his medication; however, he continued to ask his physician for refills.

15. The Tenant stated that since the Court Release Order, he has been living with his parents and he has had no incidents since leaving the building. The Tenant remarked that in February 2024 he asked the Landlord to be transferred to another residential complex, believing that if he was not living in the same building as Liza Schryer, he would take his medication as required, have no anger issues, mind his own business, and consequently, there would be no further incidents. The Tenant was adamant that he could control his mood if transferred to another building.

### Analysis

16. On the basis of the evidence provided and on a balance of probabilities, I find that on January 19, 2024, the Tenant assaulted Heather Brown and Liza Schryer, as defined under section 265(1)(A) of the Criminal Code, and contrary to section 266 of the Criminal Code. In this matter I find the Landlord's evidence, with a video of one assault and the testimony of the two victims, more compelling than the Tenant's testimony evidence. I am not satisfied that the victims were carrying knives during the assaults or that the Tenant's conduct in assaulting the two women was in any way required for self-defense. I find that the sudden, unprovoked, aggressive, and violent nature of the assaults are a safety issue for other tenants and occupants residing in the residential complex – particularly for a building with a mix of vulnerable adults as tenants.

### **Daily Compensation and Rent Deposit**

17. The Tenant was required to pay the Landlord \$449.82 in daily compensation for use and occupation of the rental unit for the period from April 17, 2024 to August 13, 2024.
18. Based on the monthly rent, the daily compensation is \$3.78. This amount is calculated as follows: \$115.00 x 12, divided by 365 days.
19. Since the termination date in the notice of termination, the Tenant paid the Landlord \$512.92 in rent.
20. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
21. The Landlord collected a rent deposit of \$657.32 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$10.17 is owing to the Tenant for the period from January 1, 2024 to August 13, 2024.
22. The amount of the rent deposit and interest on the rent deposit is applied to the amount the Tenant is required to pay.

### **Relief from Eviction**

23. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
24. The Tenant's representative submitted that the Tenant's conduct on January 19, 2024, was the result of a disability; therefore, the *Ontario Human Rights Code* applies, and the

Landlord was required to accommodate the Tenant to the point of undue hardship. The representative submitted further that by not asking the Tenant's physician about more specific accommodation measures, and by not transferring the Tenant to another residential complex, the Landlord did not accommodate the Tenant to the point of undue hardship. The representative asserted that under these circumstances, relief from eviction must be granted.

25. Section 2(1) of the *Ontario Human Rights Code* (the "Code") provides that everyone has the right to equal treatment with respect to housing, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed (religion), sex (including pregnancy, gender identity), sexual orientation, age, marital status, family status, disability, or the receipt of public assistance.
26. I find that the Tenant had a condition of mental impairment pursuant to s. 10(1)(b) of the Code, and the Tenant's conduct as a result of this impairment resulted in the two assaults on January 19, 2024, that gave rise to the grounds for eviction. Accordingly, s. 2(1) of the Code applies and the Landlord is required to accommodate the Tenant to the point of undue hardship. I accept that undue hardship is limited to considerations of cost, outside sources of funding, and safety.
27. On the basis of the evidence provided, I am satisfied that the Landlord has fulfilled its procedural and substantive duty to accommodate the Tenant to the point of undue hardship. The Landlord actively pursued information from the Tenant's physician regarding the Tenant's mental impairment and accommodation options, but received no specific accommodation measures, other than to reduce situational stress and provocation. I find that the Landlord attempting to shield the Tenant from situational stress and provocation in any of their residential complexes represents undue hardship – particularly in residential complexes with many vulnerable adults.
28. In addition, the Tenant's physician was non-committal regarding the chances of a recurrence of the assaults, saying only that each situation is different. Furthermore, I am not satisfied that the Tenant can remain compliant taking his medications to mitigate the chances of further violent behaviour, as evident from his testimony that he was not medically compliant with treatments, even though his physician stated so.
29. I therefore find, for the reasons provided in paragraphs 27 and 28, that transferring the Tenant to another floor of the building, or to another one of the Landlord's residential complexes, would, on a balance of probabilities, also transfer the safety risks posed by the Tenant to other tenants in the building or in a new residential complex. I therefore find that such a transfer, for safety reasons, represents undue hardship for the Landlord. I am satisfied that such a transfer, more likely than not, would result in a breach of the Landlord's obligation not to substantially interfere with tenants' reasonable enjoyment of their rental units.

**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 15, 2024.

2. If the unit is not vacated on or before September 15, 2024, then starting September 16, 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 September 16, 2024.
4. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
5. The Landlord owes \$667.49 which is the amount of the rent deposit and interest on the rent deposit.
6. As of the date of the hearing, the amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the amount the Landlord is entitled to by \$481.49.
7. However, the Landlord is authorized to deduct from amount owing to the Tenant \$3.78 per day for compensation for the use of the unit starting August 14, 2024 to the date the Tenant moves out of the unit.
8. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

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**September 4, 2024**  
**Date Issued**

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Frank Ebner  
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 March 16, 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.