



## Order under Section 31 Residential Tenancies Act, 2006

**Citation:** JOHNSTON v THE WEXFORD RESIDENCE INC., 2023 ONLTB 79729

**Date:** 2023-12-22

**File Number:** LTB-T-069520-22

**In the matter of:** 507, 1860 Lawrence Ave E  
Scarborough ON M1R 5B1

**Between:** ROBERT JOHNSTON Tenant  
ESTATE OF ROBERT JOHNSTON

**And**

THE WEXFORD RESIDENCE INC. Landlord

ROBERT JOHNSTON (the 'Tenant') applied for an order determining that THE WEXFORD RESIDENCE INC. (the 'Landlord') harassed, obstructed, coerced, threatened or interfered with the Tenant.

This application was first heard by videoconference on August 31, 2023. The hearing was adjourned as a result of insufficient time remaining in the hearing block to complete the hearing. The adjourned hearing was heard by videoconference on November 29, 2023. The Tenant's trustees, Jennifer Fellini and Leslie Hofer, and the Tenant's trustees' representative, Shaun Harvey, attended the adjourned hearing. The Landlord's agent, Bijaya Singh, and the Landlord's representative, David Lees, also attended the adjourned hearing.

**Determinations:**

1. As explained below, the Tenant did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.
2. The Tenant passed on January 26, 2021; his two daughters, Leslie Hofer and Jennifer Fellini, are assigned as Trustees of the Tenant's estate.
3. At the start of the hearing on August 31, 2023, the Tenant's trustees requested an amendment to the T2 application with several new allegations of harassment over the period of March 6, 2018 to August 15, 2019, as well as a remedy of general compensation in the amount of \$20,000.00 for damage to the dignity of the Tenant under the *Ontario Human Rights Code*.
4. As determined in the Board's Interim Order LTB-T-069520-22-IN, issued on September 15, 2023, the Tenant's trustees' request to amend the T2 application is denied pursuant to s. 3(4), s. 29(2), and 201(1)(f) of the *Residential Tenancies Act, 2006* (the "Act"), and in accordance with the Board's Rules of Procedure 15.3b.

5. On August 28, 2019, the Tenant filed a T2 application (T2) pursuant to s. 29(1)4 of the Act alleging:
  - (a) the Landlord's service of an N7 notice to the Tenant to end the tenancy was harassment and coercion, and conduct in violation of the Tenant's human rights;
  - (b) the Landlord's request for 60-days notice before the Tenant vacated the unit, after the N7 was served, was harassment; and
  - (c) the Landlord's requirement to move the Tenant from the unit in a short timeframe was harassing.
6. These T2 application allegations, as well as the Tenant's requested remedies, were confirmed by the Tenant's trustees during the first portion of the hearing on August 31, 2023, as provided in the Board's Interim Order LTB-T-069520-22-IN, issued on September 15, 2023.
7. The Tenant filed the T2 application within one-year of the date of the allegations of harassment in paragraph 5 above, pursuant to s. 29(2) of the Act. Therefore, these Tenant allegations will be considered.
8. The parties signed a tenancy agreement on March 1, 2018 with a monthly rent of \$1,191.00. The Tenant moved into the rental unit in a retirement residential complex on March 6, 2018. The Tenant moved out of the unit into a long-term care facility on August 6, 2019, vacated the unit on August 15, 2019, and no longer retained possession of the unit on August 29, 2019.

### **Tenant's Evidence**

9. Trustee Jennifer Fellini testified that the rental unit was in a seniors apartment complex with residential apartments on one side of the complex and a long-term care facility on the other side. The Trustee stated that since her father moved into the unit his cognitive impairment worsened and he needed help keeping track of things, and as a result she hired personal support workers to assist him. The Trustee also confirmed that during her father's tenancy she monitored and used her father's email account, with his consent, because her father did not want to deal with tenancy issues.
10. The Trustee testified further that the Landlord was not part of her father's medical team, and was not responsible for any assessment for potential long-term health care for her father. The Trustee acknowledged that she witnessed the signing of the tenancy agreement on March 1, 2018, and that the Landlord was not responsible for providing any additional health care services to the Tenant as part of the agreement. However, she noted that the Landlord was aware of her father's mental health issues, to include disorientation. The Trustee submitted evidence of correspondence with the Landlord indicating this awareness.
11. The Trustee acknowledged that on March 25, 2018 her father exited the residential complex to get coffee, and police were called to assist in locating and returning her father

to the residential complex as a result of his disorientation. The Trustee continued that despite this incident, she was not concerned about her father walking to get coffee outside of the residential complex, believing that he could do this independently if the Landlord provided her father with a tracking bracelet.

12. The Trustee acknowledged that in April 2019 her father's decline continued, and was concerning; however, she believed that her father could continue to live independently in the unit.
13. The Trustee confirmed that the Landlord took photos of her father to document his appearance in common areas of the residential complex without appropriate clothing. The Trustee remarked that she had an issue with the Landlord taking these photos; however, she did not complain to the Landlord for fear that the Landlord would take action to interfere with her father's reasonable enjoyment of the unit and the residential complex. The Trustee stated however that she was concerned about her father walking outside of the residential complex without shoes.
14. The Trustee confirmed that on June 25, 2019 she met with the Landlord and requested a security bracelet for her father to alleviate the Landlord's concern about her father's safety when wandering disoriented. She noted that the Landlord advised her that her father could not have a security bracelet because he was not residing in the Landlord's long-term care facility. The Trustee acknowledged that on November 26, 2018 via email, and during the meeting on June 25, 2019, the Landlord recommended to her that, given her father's decline, she should consider applying for long-term care for her father on a crisis basis.
15. The Trustee testified that on July 23, 2019 she received an email from the Landlord stating that her father had left the shower on and flooded his unit as well as unit 407 one floor below. The Trustee stated that her sister, Leslie Hofer, attended the unit on July 23, 2019, cleaned up the water, and noted that there was no damage to the unit or any furniture in the unit. The Trustee testified that she did not know the source of the water in her father's unit. The Trustee noted that in July 2019 her father requested assistance while showering in the event that he ever fell in the shower, and at that time, her father was not showering or shaving by himself.
16. The Trustee confirmed that she had a telephone meeting with the Landlord on July 25, 2019, and the Landlord advised her that her father should move to a long-term care facility; however, she was opposed to this move believing that her father could continue to reside in the unit.
17. The Trustee testified that on July 25, 2019 she received an email from the Landlord that her father had been served an N7 notice because on July 23, 2019 he had left the shower on flooding his unit and the units below, and as a result, impaired the safety of other tenants. The Trustee stated further that she and her father did not dispute the N7 because the environment in the residential complex was hostile and humiliating for her father. She remarked that she and her father just wanted to get the Landlord "off their back". The Trustee testified further that her father physically left the unit on August 6, 2019 to secure a position in a long-term care facility, and the unit was fully vacated on August 15, 2019. She noted that she returned the unit keys to the Landlord on August 29, 2019.

18. The Trustee asserted that the Landlord's insistence for 60 days of notification before the Tenant vacated the unit, even after the Tenant received the N7, was harassing. The Trustee also asserted that the N7 notice, and a call from a long-term care facility on August 2, 2019, that a position was available as of August 6, 2019, resulted in a constrained time period for the Tenant to move, and this sudden requirement to move was harassment.
19. The Trustee contended that the unit was not flooded as a result of her father's actions, but rather the Landlord served the N7 in bad faith to create a crisis, and therefore force Community Care Access Centre (CCAC) to assess her father as a candidate for a long-term health care facility.
20. The Trustee testified that she moved her father to Midland Gardens long-term care facility, and that this facility provided her father with many more services than the Landlord. The Trustee noted that the monthly rent for the unit in the long-term care facility was \$1,068.04 more expensive, and that her father incurred \$2,107.64 in moving expenses as a result of the relocation. The Trustees did not provide any documentary evidence of expenses incurred as a result of the rent difference, or expenses related to moving costs.
21. The Trustee stated that the Landlord failed to accommodate her father, as per the *Human Rights Code*, to a point that did not cause the Landlord undue financial hardship. The Trustee asserted that this accommodation would have allowed her father to retain his tenancy. She explained that the Landlord could have provided her father with a security bracelet to prevent him from leaving the residential complex as a result of his disorientation; however, the Landlord declined to provide this bracelet. The Trustee explained further that the Landlord could have put child safety knobs on the shower to prevent any flooding danger, and that the personal support workers caring for her father would have continued supervising him showering to mitigate risks of injury or damage.

### **Landlord's Evidence**

22. The Landlord's agent, Bijaya Singh, is the Coordinator for Tenant Services for the seniors' apartment units of the residential complex. The agent testified that the apartment units are rented to seniors who are 59 years of age or older, and unlike the long-term care facility on the other side of the building, the Landlord does not offer any care services to tenants of the apartment units. The agent noted however that each apartment unit bedroom has a call button that rings staff in the long-term care facility, for staff to call emergency services if required. She also noted that the apartment units and the long-term care facility share a common front entrance and access to social programs that she organizes. The agent stated that most tenants in the apartment units eventually move to a long-term care facility.
23. The agent testified further that she signed the tenancy agreement with the Tenant on March 1, 2018, and that there were no provisions for any care services as part of this tenancy agreement. The Landlord submitted a signed copy of the tenancy agreement.
24. The agent stated that on March 25, 2018 she received an email from a Nurse Manager of the Landlord's staff, Fida Alkhatib, advising her that the Tenant on March 25, 2018 departed the residential complex to purchase a coffee, but the Tenant had become

disoriented and was unable to return to the residential complex without police assistance. The Landlord submitted a copy of this email.

25. The agent stated that on April 8, 2018 she was informed from a member of the Landlord's staff, Shantha Joseph, that the Tenant on April 7, 2018 was wandering around the lobby of the residential complex looking for coffee, and the staff were concerned that he would exit the residential complex not properly dressed for the weather. The Landlord submitted a copy of the email correspondence from the Landlord's staff from April 7 and 8, 2018 regarding this incident.
26. The agent stated that on October 23, 2018 she seen the Tenant exit the residential complex not appropriately attired for the weather, and was concerned about the Tenant's welfare and ability to return to the residential complex from a local coffee shop across a busy intersection. As a result, she had a staff member assist the Tenant with his return to the residential complex, and emailed the Tenant's daughters on October 23, 2018 regarding this incident. The Landlord submitted a copy of this email and Trustee Hofer's response email thanking her for the information.
27. The agent testified that on November 24, 2018 she received an email from a Nurse Manager of the Landlord's staff, Iryna Zhuk, that the Tenant tried to cross the street near the residential complex and staff, fearing for his safety, brought him back to his unit. The staff reported that the Tenant could not find his unit. The Landlord submitted a copy of this email. The agent stated that she advised the Tenant's daughters via email on November 26, 2018 about this incident, and recommended that they seek long-term care for their father on a crisis basis, given that his unit, residential complex and tenancy were for tenants who could live independently without care services. The Landlord submitted a copy of the agent's November 26, 2018 email to the Tenant's daughters, as well as Trustee Hofer's email response to the agent on November 27, 2018, stating that the daughters were working with their father's CCAC care coordinator, and they did not expect the Landlord's staff to assist their father in procuring coffee, or to assist their father with his return from the local coffee shop.
28. The Landlord also submitted a copy of an email from Sandra Bassett, the Landlord's Executive Director and CEO, sent to the Landlord's legal representative on November 29, 2018. In the email the CEO advised the representative that the Tenant is unable to safely live in the rental unit independently and requires immediate long-term care. The CEO requested advice on how to resolve the Landlord's tenancy concerns regarding the Tenant.
29. The agent stated further that on April 9, 2019 the Tenant was in the common area of the residential complex not appropriately attired and in a state of confusion. She took a photo of the Tenant and sent it to the Tenant's daughters along with an email expressing her concern about the Tenant's confused state and once again recommending that the Tenant move to a long-term care facility on a crisis basis given that he requires 24/7 care services. The Landlord provided a copy of the email and photo, as well as a copy of Trustee Fellini's response email on April 9, 2019 acknowledging her father's decline and her coordination with CCAC for a solution.

30. The agent testified further that on June 14, 2019 she took a photo of the Tenant in the common area of the residential complex bare footed and in a state of confusion, and on June 17, 2019 she took another photo of the Tenant in the common area of the residential complex bare chested and in a state of confusion. The Landlord submitted copies of both photos.
31. The agent remarked that as a result of all these incidents, on June 25, 2019 she attended an in-person meeting with the Landlord's CEO and the Tenant's daughter, Trustee Hofer. The agent noted that the CEO recommended that the Tenant be moved to a long-term care facility on a crisis basis; however, the daughter did not agree with this move. The agent stated that during the meeting the daughter requested a security bracelet for her father, but the CEO declined stating that the bracelets were only for long-term care residents. The Landlord submitted a copy of the CEO's written meeting notes.
32. The agent asserted that on July 23, 2019 the Landlord's maintenance staff advised her that the Tenant's unit 507, and unit 407 one floor below, were both flooded with water, but unit 607 one floor above the Tenant's unit had no water flooding. On the basis of the information she received from the maintenance staff, the agent stated that she emailed the Tenant's daughter Trustee Hofer, and Ms. Hofer attended the unit the evening of July 23, 2019 and cleaned up the water, noting that water was dripping from her father's bathroom ceiling. The Landlord submitted copies of the July 23, 2019 email exchanges between the agent and Ms. Hofer.
33. The Landlord submitted a copy of an invoice from Budget General Contracting, dated August 12, 2019, for costs of \$1,497.00 for tile removal in unit 407. The agent stated that this work was required as a result of the flooding in unit 507 on July 23, 2019. The Landlord did not submit any photos of water or water damage in the Tenant's unit or any other unit.
34. The agent testified that the Landlord decided to serve the Tenant an N7 notice because the Tenant's behaviour seriously impaired the safety of another person, the Tenant wilfully damaged the rental unit, and the Tenant used the rental unit in a manner inconsistent with its use as a residential premises and this caused serious damage. The agent testified further that the N7 was served specifically because on July 23, 2019 the Tenant left the washroom shower on causing water damage to his unit and units 407, 207 and M-07, and over the period of March 2018 to July 2019 the Tenant's severe dementia seriously impaired his safety and the safety of other tenants and the building. The Landlord submitted a copy of the N7 notice.
35. The agent contended that her 10 years of working for the Landlord at the residential seniors' apartments provided her with sufficient experience to recognize dementia in tenants, and she believed that the Tenant suffered from dementia for the duration of his tenancy. The agent acknowledged that she was not sure whether the Tenant intentionally flooded his unit or not. The agent confirmed that she served the N7 to the Tenant on July 25, 2019 by placing the N7 in his mailbox.
36. The agent remarked that on July 25, 2019 she attended a telephone meeting with the Landlord's CEO and the Tenant's two daughters to discuss the Tenant's tenancy and living

requirements. The agent stated that she coordinated exclusively with the Tenant's daughters regarding the Tenant's tenancy. The agent confirmed that the Landlord never filed an L2 application to terminate the tenancy.

37. The agent stated further that on August 2, 2019 she advised the Tenant's daughters, via email, to provide the Local Integrated Health Network (LIHN) with a copy of the Tenant's eviction letter to expedite the Tenant's receipt of a long-term care position. The Landlord submitted a copy of this email, as well as a copy of Trustee Fellini's email response on August 2, 2019, thanking the agent for her concern, and advising the agent that her father was a priority for LIHN.
38. The agent confirmed that on August 20, 2019 she sent an email to Trustee Fellini advising her that 60 days written notice, as per the tenancy agreement, is required before vacating the unit, and that the Tenant is responsible to pay the rent over this period. However, as noted in the email, the Tenant's apartment was re-rented effective September 1, 2019, therefore rent would only be owed to August 31, 2019, and a rent reimbursement of \$1,793.09 as requested by Trustee Fellini via email on August 16, 2019 would not be provided. Ms. Fellini's email to the agent on August 16, 2019 advised the agent that on August 3, 2019 the agent was informed of the Tenant's impending departure from the unit on August 6, 2019. The Landlord provided copies of these email exchanges.
39. The agent testified that she received the unit keys from Trustee Hofer on August 29, 2019, and she did not recall ever changing the locks on the unit.

## Analysis

### Status of the Rental Unit

40. On the basis of the evidence provided, I find that the rental unit is a care home pursuant to s. 2(1) of the Act, and pursuant to s. 1 and s. 2 of *Ontario Regulation 516/06* under the Act. Accordingly, Part IX of the Act applies to this tenancy.
41. I am satisfied that there were no provisions in the tenancy agreement, signed by both parties on March 1, 2018, that required the Landlord to provide the Tenant with any care services, as listed in s. 2 of *Ontario Regulation 516/06*.
42. However, I accept that the Tenant's unit bedroom was equipped with a call button that rings staff in the neighbouring long-term care facility, to enable staff to call emergency services if required. I am also satisfied that throughout the duration of the Tenant's tenancy the Landlord's staff, without prompting, assisted the Tenant on numerous occasions when they assessed that the Tenant's personal safety was jeopardized. For these reasons, I find that the Landlord provided the Tenant with personal emergency response services, and these services are defined as care services pursuant to s. 2.(1)9 of *Ontario Regulation 516/06*.
43. I am also satisfied that the Landlord offered optional social programs to the Tenant that were organized for both tenants of the residential complex and residents of the neighbouring long-term care facility. I find that these programs were social activities, and

these activities are defined as care services pursuant to s. 2.(2)1 of *Ontario Regulation 516/06*.

44. For the reasons provided in paragraphs 42 and 43 above, and despite the absence of care services listed in the tenancy agreement, I find that the Tenant's unit was a care home on the basis of the care services that the Landlord provided to the Tenant during the tenancy, even though those care services were not the primary purpose of the tenancy.

#### Representation of the Tenant

45. On the basis of the evidence provided, I am satisfied that the Tenant's daughters communicated exclusively with the Landlord for the duration of the tenancy, on behalf of the Tenant, on all matters related to the tenancy. I am satisfied that the Tenant requested that his daughters represent him, and consented to their active representation of his tenancy interests with the Landlord. Trustee Fellini testified that her father did not want to concern himself with tenancy issues, and for this reason she monitored and used his email account when corresponding with the Landlord.
46. I accept that, other than the signing of the tenancy agreement on March 1, 2018, the Landlord communicated exclusively with the Landlord's daughters regarding the Tenant's tenancy. I am satisfied that it was both appropriate and reasonable for the Landlord to communicate with the Tenant's daughters, as his representatives, given the Tenant's consent for this representation. I therefore find that it was also appropriate and reasonable for the Landlord to communicate with the Tenant's representatives during discussions regarding the termination of the Tenant's tenancy.

#### Status of the Tenant's Mental Health

47. On the basis of the evidence provided, I am satisfied that throughout the duration of the tenancy the Tenant's cognitive impairment worsened resulting in periods of confusion and disorientation, to include incidents of the Tenant not being suitably dressed in the common areas of the residential complex, and unable to safely return to his unit. I am satisfied that for reasons of safety and compassion, the Landlord's staff assisted the Tenant during his periods of disorientation and confusion; although, they were not obligated to do so pursuant to the tenancy agreement, and as stated by the Tenant's daughters.
48. I am also satisfied that after the Landlord observed Tenant incidents of confusion and disorientation, the Landlord immediately reported these incidents to the Tenant's daughters, asserting that:
- a) the Tenant could no longer live independently in the residential complex and in his unit;
  - b) the Tenant required care 24 hours per day, 7 days per week;
  - c) the Tenant's care requirements exceeded the Landlord's capacity and capabilities; and
  - d) the Tenant be moved to a long-term care facility on a crisis basis to accommodate his health requirements.



49. On the basis of the evidence provided, and on a balance of probabilities, I am satisfied that on July 23, 2019 the Tenant's conduct in his unit resulted in water flooding in his unit, as well as water flooding in unit 407 one floor below. I find that, on a balance of probabilities, that this flooding occurred as a result of the Tenant failing to shut-off the water from his shower. I accept that after this incident, on July 25, 2019, the Landlord and the Tenant's two daughters met to discuss the tenancy, and the Landlord re-asserted their position as provided in paragraph 48 above.
50. I accept that the Tenant's daughters did not agree with the Landlord's assertions and recommendations; although, they recognized the mental health decline of their father and actively coordinated for an eventual position in a long-term care facility. The daughters preferred to keep their father in his unit as long as possible through the continued provision of Personal Support Workers (PSWs), that the daughters had previously arranged, and the provision of a security bracelet and child-proof shower knobs, that the Landlord declined to provide.
51. On the basis of the evidence provided, I find that the Tenant's care service requirements exceeded the Landlord's capabilities and obligations to provide them, pursuant to the tenancy agreement signed on March 1, 2018, and in accordance with the existing care services provided by the Landlord as determined in paragraphs 42 and 43 above. On the basis of the numerous Tenant incidents of confusion and disorientation, to include the shower flooding on July 23, 2019, I find that the Tenant could no longer live independently in the unit without 24/7 supervision, and that existing PSWs, a security bracelet, and child-safety shower knobs would be insufficient to accommodate the Tenant's care service requirements.
52. In this matter, I find the Landlord's evidence more compelling than the Tenant's evidence. I find that the care service observations and recommendations of the Landlord's staff, to include the Executive Director, Coordinator for Tenant Services, two Nurse Managers, and one other staff member – with their daily experience of providing services for seniors – to be more credible than the observations of the Tenant's two daughters who lack this experience.

#### N7 Notice - Harassment

53. Section 23 of the Act states:

A landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant.

54. While there is no definition of "harassment" in the Act, the *Ontario Human Rights Code* defines "harassment" as:

engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.

55. On the basis of the evidence provided, I find that the Landlord was not entitled to serve the Tenant an N7 Notice. As determined in paragraph 44 above, the rental unit is a care home. As such, no notice of termination was required by the Landlord to seek a

termination of the tenancy. Rather, the Landlord was required to file an L7 application, pursuant to s. 148(1)(b) of the Act, seeking to transfer the Tenant out of the care home and evicting the Tenant on the basis that the Tenant required a level of care that the Landlord could not provide. Furthermore, if a dispute arose between the parties with respect to s. 148(1)(b) of the Act, then, pursuant to s. 148(3) of the Act, mandatory mediation would be required before the Board heard the Landlord's L7 application.

56. I accept that the Landlord served the Tenant an N7 on the basis of an incorrect assessment that the unit was not a care home. Accordingly, without an L7 application, mandatory mediation was not available to the Tenant pursuant to s. 148(3) of the Act.
57. On the basis of the evidence provided, I am not satisfied that, as alleged in the N7, the Tenant's behaviour seriously impaired the safety of another person, the Tenant wilfully damaged the rental unit, or the Tenant used the rental unit in a manner inconsistent with its use as a residential premises and this caused serious damage. The Landlord did not establish that the Tenant seriously impaired another person, that the Tenant wilfully damaged the unit, or that the Tenant's use of the shower was inconsistent with its use as a residential premises. Given the specific allegations provided by the Landlord in the N7 under s. 63 of the Act, I find that serving an N5 for substantial interference and negligent damage, pursuant to s. 64 and s. 62 of the Act respectively, would have been more appropriate in this matter – had the unit not been a care home.
58. Despite the Landlord's error in serving an N7 as determined in paragraphs 55, 56, and 57, the Tenant was entitled to dispute the N7, not vacate the unit, and have the matter adjudicated through a hearing at the Board. I am satisfied that such a hearing may have resulted in determinations similar to those provided in paragraphs 55, 56, and 57. However, the Tenant and his representatives elected not to dispute the N7, and decided to vacate the unit in accordance with the N7 notice. I accept that the Tenant vacated the unit in accordance with the N7 because, according to Trustee Fellini, she and her father just wanted to get the Landlord "off their back".
59. On the basis of the evidence provided and the determinations in paragraphs 47 to 52, I am satisfied that the Landlord served the N7 in good faith, genuinely believing that a termination of the tenancy was required to provide the Tenant with sufficient care services given his declining mental health. I am also satisfied that the Landlord in good faith believed that the N7 was the correct notice to seek a termination of the tenancy. I am satisfied that the Landlord did not select the N7 notice to specifically harass the Tenant.
60. I find that the Landlord's correspondence with the Tenant's daughters over the duration of the tenancy, to include the service of the N7, was timely, polite, and professional. I also find that the Landlord communicated their concerns regarding the Tenant's care, the tenancy, and the N7, in a reasonable and appropriate manner to ensure that the optimum care services were provided to the Tenant. I am satisfied that the Landlord's service of the N7 was not a deliberate error intended to be vexatious or threatening. The Tenant did not establish, with sufficient evidence, that the N7 was served in bad faith, for vexatious reasons, or to be threatening.

61. Accordingly, for the reasons provided in paragraphs 58, 59, and 60, with respect to serving the N7, I find that the Landlord did not breach their obligations pursuant to s. 23 of the Act.

#### N7 Notice – Human Rights

62. 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.

63. 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 termination of his tenancy. Accordingly, s. 2(1) of the Code applies and the Landlord was required to accommodate the Tenant to the point of undue financial hardship, unless the accommodating measures fundamentally altered the nature of the tenancy agreement.

64. Given the Tenant’s care service requirements as determined in paragraphs 47 through 52, I am satisfied that the provision of a security bracelet, child-proof shower knobs, and 24/7 supervision would have fundamentally altered the nature of the tenancy agreement, as provided in the written tenancy agreement signed on March 1, 2018 and the existing modest care services provided to the Tenant as determined in paragraphs 42 and 43.

65. The nature of the tenancy agreement between the parties required the Tenant to live independently and unsupervised in a rental unit with rudimentary care services. Accommodating the Tenant with a security bracelet, child-proof shower knobs, and 24/7 supervision would have fundamentally changed the tenancy agreement, similar to an agreement between the Tenant and a long-term care facility. The Tenant’s residential complex was not a long-term care facility, nor was it equipped or staffed as a long-term care facility. The Tenant required the services of a long-term care facility, as evident from his move to Midland Gardens long-term care facility on August 6, 2019. Trustee Fellini confirmed that Midlands Gardens provided her father with many more services than the Landlord.

66. For the reasons provided in paragraphs 64 and 65, I find that the Landlord did not discriminate against the Tenant with respect to the Code. Accordingly, I find that the Landlord did not breach s. 2(1) of the *Ontario Human Rights Code* when the Landlord served an N7 to the Tenant.

#### 60-Day Notice

67. On the basis of the evidence provided, I am satisfied that on August 20, 2019, after the Tenant vacated the unit as per the N7, the Landlord stated that 60-days notice is required before vacating the unit, and therefore no rent would be reimbursed to the Tenant. I accept that upon the termination of the tenancy the parties disagreed about the rent owed.

68. If a tenant vacates a unit in accordance with a notice of termination, rent arrears are calculated up to the date the tenant vacated the unit. I am therefore satisfied that the

Landlord was not correct to stipulate that 60-days notice was required before tenancy termination, and that this period was a determinant of the rent owed. However, I am not satisfied that the Landlord's misinformation to the Tenant was vexatious in nature and deliberately stated to cause the Tenant annoyance, frustration or worry. The Tenant did not establish that the Landlord's comments were vexatious. For these reasons, with respect to the Landlord's 60-day notice error, I find that the Landlord did not breach their obligations pursuant to s. 23 of the Act.

### Tenant's Move

69. On the basis of the evidence provided, I am satisfied that the Tenant physically moved from the unit on August 6, 2019 in response to the Landlord's N7 with a termination date of August 5, 2019, and also in response to a call Trustee Fellini received from a long-term care facility that a position for her father would be available on August 6, 2019. I am satisfied that the Tenant was entitled to dispute the N7, not vacate the unit, and have the matter adjudicated through a hearing at the Board. The Tenant and his representatives elected not to dispute the N7, and decided to vacate the unit as per the notice, and move to a long-term care facility that provided more care services than the Landlord provided.
70. I accept that the sudden move from the unit to a long-term care facility was stressful for both the Tenant and his daughters. However, the Tenant chose to accept the position in the long-term care facility on August 6, 2019, four days after receiving a call from the long-term care facility, and elected not to dispute the N7. Under these circumstances, I am not satisfied that the Landlord's service of the N7, prompting a relocation of the Tenant, was an act of harassment. I am not satisfied that the Landlord served the N7 for the express purpose of creating a constrained move timeline for the Tenant. Furthermore, I am not satisfied that the Landlord's conduct was deliberate for the purpose of causing the Tenant and his daughters annoyance, frustration or worry during the Tenant's move to a long-term care facility. The Tenant did not establish that the Landlord's conduct was vexatious.
71. For the reasons provided in paragraphs 69 and 70, with respect to the Tenant's move, I find that the Landlord did not breach their obligations pursuant to s. 23 of the Act.

### Summary

72. With respect to the Tenant's allegations in paragraph 5 above, the Tenant did not prove that the Landlord breached their obligations pursuant to s. 23 of the Act, or breached their obligations pursuant to s. 2(1) of the Code. Therefore, the Tenant's remedies will not be considered, and the Tenant's application must be dismissed.

### **It is ordered that:**

1. The Tenant's application is dismissed.

**December 22, 2023**  
Date Issued

\_\_\_\_\_  
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.