



Order under Section 69 / 89 Residential Tenancies Act, 2006

Citation: Poverello Charities Ontario v Nkurunziza, 2023 ONLTB 75923

Date: 2023-11-20

File Number: LTB-L-008261-22
LTB-L-028456-22

In the matter of: 3RD FLOOR, SOUTH-WEST ROOM
203 BERKELEY ST
TORONTO ON M5A2X3

Between: Poverello Charities Ontario Landlord

And

Darius Nkurunziza Tenant

Poverello Charities Ontario and Stephen Sobol (the 'Landlord') applied for an order to terminate the tenancy and evict Darius Nkurunziza (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes. **This is the L1 Application.**

The Landlord also applied for an order to terminate the tenancy and evict the Tenant because:

- the Tenant another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant; and
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises; 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. **This is the L2 Application.**

The Landlord also applied for an order requiring 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 is also the L2 Application.**

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

These applications were heard by videoconference on October 12, 2022.

The Landlord's Agent, Stephen Sobol ('S.S. '), the Landlord's Legal Representative, Ryan Bernard, the Tenant's Legal Representative, Daniel Tucker attended the hearing. Michael Stewart (M.S.) appeared as a witness for the Landlord and Mitchell Manicone ('M.M. ') appeared as a witness for the Tenant.

Procedural History

The hearing of these applications was first scheduled on May 5, 2022 which was adjourned on consent. A second hearing was scheduled on June 10, 2022 which was also adjourned on consent. A third hearing was held on October 12, 2022.

After the hearing of these applications and review of the evidence filed for the L1 application, I was not satisfied that the Landlord qualified for an exemption under subsections 120(1) and 7(1) of the *Residential Tenancies Act, 2006* (the 'Act') nor was this exemption explored during the hearing. In consideration of procedural fairness, interim order LTB-L-008261-22-IN was issued on February 6, 2023 ordering the parties to file post-hearing submissions with respect the exemption claimed by the Landlord under subsections 120(1) and 7(1) of the Act.

These submissions were received by the Board from the Landlord's Legal Representative on February 24, 2023 in which they requested a full day hearing to hear submissions relating to the exemption. The Tenant's Legal Representative made a submission on February 27, 2023 objecting to the Landlord's request.

On March 22, 2023, a direction from the Member was issued denying the Landlord's request and ordered that post-hearing submissions be filed with the Board by the Landlord on or before March 31, 2023 and by the Tenant on or before April 10, 2023.

On March 31, 2023, the Board received these submissions from the Landlord's Legal Representative. On April 10, 2023, the Board received these submissions from the Tenant's Legal Representative. A response submission was also filed with the Board on April 19, 2023 by the Landlord's Legal Representative.

Determinations:

L1 Application:

Is the Landlord exempt under subsection 7(1)(6) of the Act

1. The Landlord served the Tenant with a Notice to End Tenancy Early for Non-payment of Rent ('N4 Notice'). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
2. On October 19, 2021, and prior to serving the Tenant with the N4 Notice, the Landlord gave the Tenant a N2 Notice of Rent Increase ('N2 Notice'). The N2 Notice shows the monthly rent will increase from \$450.00 to \$1,350.00 per month and the effective date of the rent increase is February 1, 2023.
3. At the hearing, the Landlord's Legal Representative submitted the Landlord's N2 Notice is valid as the Landlord is a non-profit organization.
4. The monthly rent consists of \$450.00 per month for accommodation and \$215.00 per month for the food program offered by the Landlord.
5. S.S. testified that because of the Tenant's behaviour, the Landlord has been unable to rent the other two rooms located on the third floor. As a result, the N2 Notice was given to the Tenant increasing the monthly rent from \$450.00 to \$1,350.00 per month which is equivalent to the rental income for three rooms.

Landlord's post-hearing submissions

6. In their submissions, the Landlord states they are exempt under subsection 120(1) which says:

120(1) No landlord may increase the rent charged to a tenant, or to an assignee under section 95, during the term of their tenancy by more than the guideline, except in accordance with section 126 or 127 or an agreement under section 121 or 123.

7. And subsection 7(1)(6) of the Act which states:

Exemptions related to social, etc., housing

7 (1) Paragraphs 6, 7 and 8 of subsection 30 (1), sections 48.1, 49.1, 51, 52, 54, 55, 56 and 95 to 99, subsection 100 (2) and sections 101, 102, 104, 111 to 115, 117, 120, 121, 122, 126 to 133, 140, 143, 149, 150, 151, 159, 165 and 167 do not apply with respect to a rental unit described below:

6. A rental unit located in a residential complex owned, operated or administered by a religious institution for a charitable use on a non-profit basis.

8. The Landlord states 'religious institution' is not defined in the Act and relies on Halsbury Laws of Canada in which it comments on the meaning of "religious institution":

Although there is no standard legal definition for the term, a religious institution may be considered an organization, incorporated or not, which uses all its resources for religious activities, and where none of the assets of the organization are available for the personal benefit of members of the organization. Thus, “religious institution” is a broader phrase than “religious denomination” or “congregation;” it includes religious orders, religious schools, missionary organizations and faith-based charitable organizations. It is not intended to refer to ad hoc alliances of faith-based groups.

9. In their affidavit, the Landlord’s Agent, Stephen Sobol (‘S.S.’) states the Landlord was first founded in 1969 by Father Joseph MacDonald, a member of the Order of Friars Minor Capuchin (the ‘Capuchin Order’), a religious order within the Roman Catholic Church. He states Father MacDonald continued the work of the Capuchin Order with the mission to provide support to the chronically homeless, which involved both attending to their physical needs for shelter and meals and their emotional needs for support and spiritual care. He adds the ministry is part of the work of the Capuchin Order who live their Christian faith and the beliefs of the Roman Catholic Church.
10. S.S. states Poverello has engaged in a number of different pursuits of its Christian mission including the establishment of thrift stores, coffee houses, drop in centres and community homes for low income individuals and persons having high contact with the psychiatric health system and suffering from chronic mental illness.
11. S.S. further states in their affidavit Poverello provides a number of services to the residents of its homes on Berkeley Street (the ‘Berkeley Homes’). Residents are expected to eat, recreate and pray together, including 10 minutes of prayer before dinner. There is an onsite chapel available to all residents and Catholic Mass is provided to the residents three times per week as well as regular chaplain services and spiritual guidance.

Tenant’s post-hearing submissions

12. In their submissions, the Tenant argues the term “religious institution” under subsection 7(1)(6) of the Act should be defined narrowly to include only organizations with a faith-based congregation as defined at s. 143(4) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) that operates rental housing on a charitable basis as secondary purpose, and should exclude charitable organizations with a predominant purpose of providing social housing (and other social services) on a charitable basis that merely espouse a faith-based ethos.
13. They further state Poverello does not qualify as a religious institution because it lacks a congregation and is primarily a charitable social service provider that offers spiritual services and espouses a religious ethos.
14. The Tenant argues the definition of religious institution from Halsbury’s Laws of Canada - Religious Institutions (2022 Reissue), as relied upon by the Landlord, does not relate to the Act and it adapted from the definition of “charitable organization” from the *Income Tax Act*, and includes the definition of “congregation” at s. 143(4). The footnote specifies:

“Adapted from portions of the definition of “charitable organization”: (CAN) *Income Tax Act*, R.S.C. 1985 (5th Supp.), c. 1, s. 149.1. Under Division F, “Special Rules Applicable in Certain Circumstances, Communal Organizations,” a “religious organization” is defined as “an organization, other than a registered charity, of which a congregation is a constituent part, that adheres to beliefs, evidenced by the religious and philosophical tenets of the organization, that include a belief in the existence of a supreme being.” “Congregation” means “a community, society or body of individuals, whether or not incorporated, (a) the members of which live and work together, (b) that adheres to the practices and beliefs of, and operates according to the principles of, the religious organization of which it is a constituent part, (c) that does not permit any of its members to own any property in their own right, and (d) requires its members to devote their working lives to the activities of the congregation”.”

15. The Tenant states the purposes of the Act are set out in its preamble:

1 The purposes of this Act are to provide protection for residential tenants from unlawful rent increases and unlawful evictions, to establish a framework for the regulation of residential rents, to balance the rights and responsibilities of residential landlords and tenants and to provide for the adjudication of disputes and for other processes to informally resolve disputes.

16. They state when interpreting and applying the Act, courts have repeatedly emphasized its tenant-protection purpose and further state where there is ambiguity with respect to the interpretation of the Act, it should be resolved in a manner that most enhances tenant protections.
17. The Tenant submits the Act’s ambiguity with respect to the definition of religious institution should be resolved in a manner that best protects tenants. The Act’s tenant protection imperative compels a narrow definition of the term Religious Institution that includes only organizations with a congregation for which the provision of social housing and other services is merely ancillary. This definition excludes organizations with a predominant purpose of providing social housing (and other social services) on a charitable basis that merely espouse a faith-based ethos.
18. In their conclusion, the Tenant submits Poverello does not meet this definition of religious institution. Although it offers spiritual services to residents, those services are not mandatory nor are there any requirements that residents adhere to or belong to any particular religious organization or subscribe to any particular dogma. Poverello provides supportive housing to those with chronic mental illness regardless of their faith or personal religious practices. They submit while Poverello is certainly a faith-based organization, it does not rise to the level of being a religious institution for the purposes of the Act.
19. In their response to the Tenant’s submissions, the Landlord states the Tenant’s narrow approach to defining a “religious institution” is not consistent with the development of the law surrounding this term. They state the Tenant’s proposal is an overly restrictive definition under the Act and requiring a congregation is neither consistent with the wording of the exemption in the Act itself, nor the available decisions in the tenancy context.

20. It is the Landlord's position that it is highly unlikely the intention of the legislature was for the Board to conduct such an exhaustive procedure for determining whether a congregation exists every time a religious institution claimed an exemption under section 7(1) of the Act. They add the Tenant's approach to require a religious institution to include a congregation is an unnecessary and unworkable interpretation.

Analysis

21. Counsel for the Landlord argues that religious institution is a broad phrase unlike that of "religious denomination" or "congregation" and it includes religious orders, religious schools, missionary organizations and faith-based charitable organizations. They rely on the definition as written in the Halsbury Laws of Canada.
22. Counsel for the Tenant argues this definition is adapted from the term "charitable organization" from the *Income Tax Act* which includes the definition of "congregation." They submit while the Landlord provides spiritual services to the residents, they do not meet the definition of religious institution as these services are not mandatory and the residents living in the Landlord's facility are not part of a congregation.
23. Religious institution is not defined in the Act. The *Religious Institutions Act*, although rescinded and replaced by the *Religious Organizations' Lands Act*, R.S.O. 1990, c. R.23 (the 'R.O.L.A. '), defines a religious organization as an association of persons, (a) that is charitable according to the law of Ontario, (b) that is organized for the advancement of religion and for the conduct of religious worship, services or rites, and, (c) that is permanently established both as to the continuity of its existence and as to its religious beliefs, rituals and practices, and includes an association of persons that is charitable according to the law of Ontario and that is organized for the advancement of and for the conduct of worship, services or rites of the Buddhist, Christian, Hindu, Islamic, Jewish, Baha'i, Longhouse Indian, Sikh, Unitarian or Zoroastrian faith, or a subdivision or denomination thereof.
24. For the purposes of this decision, I am adopting this definition. While the Landlord is a charitable organization, I am not satisfied, on a balance of probabilities, that the Landlord meets the balance of the requirements as set out in the *R.O.L.A.* The Landlord's main purpose is to provide housing for those with chronic mental illness. Religious services are offered by the Landlord but there is not a mandatory requirement that its residents must participate. In my view, the term religious institution requires a stricter definition as it relates to rental accommodation.
25. It is a well-established principle of statutory interpretation that the meaning of legislation must focus on the words of the relevant statutory provisions, read in their entire context and in their grammatical and ordinary sense and interpreted harmoniously with the scheme and the object of the legislation and with drafters' intention. The Supreme Court has repeatedly affirmed this approach to statutory interpretation, including in *R. v. Gladue*, 1999 CanLII 679 (SCC) and *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), as did the Court of Appeal for Ontario in *Matthews v. Algoma Timberlakes Corp.*

26. It is clear, as outlined in section 1, that one of the intended main purposes of the Act is to protect tenants from unlawful rent increases and evictions. Moreover, to give effect to the stated legislative intent it is necessary to ascribe a stricter definition to “religious institution.”
27. I agree with Tenant’s counsel that to give effect to the scheme and the objective of the legislation and in keeping with the intent of the Legislature, section 7(1)(6) must be interpreted narrowly so as not to carve out too large a segment and bring housing, which the Act was intended to protect, within its ambit. This position is supported by *Grenadier (Tenants of) v. We-Care Retirement Homes of Canada*, [1993] O.J. No.1550 (Div. Court.) where the Divisional Court for Ontario stated, in part, as follows:

“3. With great respect, and recognizing that the matter is by no means beyond doubt, I have concluded that, given the remedial nature of this legislation, the language of the whole clause, the burden on one who seeks to invoke an exemption, the opportunities for abuse opened up by a lesser standard and the use of the words “the purpose” (emphasis added) in the section, it was the legislature’s intent to exempt accommodation only where the enumerated purpose is the primary reason why the occupant is occupying that particular accommodation.

28. In consideration of all of the evidence submitted, and the submissions of the parties, I do not find that the Landlord met its evidentiary burden to demonstrate, on the balance of probabilities, that the exemption under subsection 7(1)(6) of the Act applies to this residential accommodation. As a result, I find the Landlord’s N4 Notice is invalid and the Landlord’s L1 application must be dismissed.

L2 Application

Notices of Termination

29. At the outset of the hearing, the Tenant’s Legal Representative submitted that the Tenant does not dispute the allegations in the N5 and N7 Notices and is seeking relief from eviction.

N5 Notice of Termination

30. On January 4, 2022, the Landlord gave the Tenant an N5 notice of termination (‘N5 Notice’) with a termination date of January 25, 2022. The N5 Notice contained the following allegations:
- From 2018 to and including October 2021, the Tenant has substantially interfered with the reasonable enjoyment of the building by other tenants of Poverello Charities Ontario by failing to properly *[sic]* use the available washroom facilities. The Tenant

also wilfully or negligently damaged the room and the second and third floor of the house; and

- From 2018 to and including October 2021, the Tenant deliberately refuses to lock the doors of the building and leaves doors wide open, which is a safety risk to the staff of Poverello and to other tenants *[sic]* who reside in the building.

31. The Landlord also included an attached schedule which formed part of the N5 Notice. In the attached schedule, the Landlord elaborates on the allegations in the N5 Notice and states that since 2018, the Tenant has been deliberately urinating on the floor and walls of the second floor bathroom of the house. The bathroom was shared by another resident who passed away in August 2021. The Tenant has also been urinating within the room, resulting in an overpowering smell of urine emanating from within the room and in the hallway of the third floor.

32. The N5 Notice also alleges the Tenant's behaviour has caused extensive damage to the house in the amount of \$11,513.48 of which the Landlord is seeking compensation from the Tenant.

N7 Notice of Termination

33. On January 4, 2022, the Landlord gave the Tenant an N7 notice of termination ('N7 Notice') with a termination date of January 25, 2022. The N7 Notice contained the following allegations:

- On September 3, 2021, the Tenant assaulted another tenant, Michael Stewart, of the residential complex, pushing Mr. Stewart and threatening to kill him. Mr. Stewart was taken to hospital and required eight stitches to treat a head injury caused by the fall. The police were called and the Tenant was charged with assault and uttering a death threat.

34. The Landlord also included an attached schedule which formed part of the N7 Notice. In the attached schedule, the Landlord elaborates in the N7 Notice and states Mr. Stewart reported that he had asked the Tenant to clean up the garbage he had emptied onto the floor of the garbage shed and it was then that the Tenant assaulted Mr. Stewart. As the Tenant had been charged a condition of his bail was that he was to remain at least fifty metres from Mr. Stewart. It was also alleged that the Landlord has called the police on three separate occasions as the Tenant had breached this condition of his bail.

Section 83 considerations

Evidence of the Landlord's Agent ('S.S')

35. S.S. has been the Director for the Landlord since 2016. He described that the Landlord is a charitable organization which provides long term housing for those with chronic mental

illness. The residential complex consists of four buildings, three of which are designated for male residents only. Meals are provided to the Tenants and are shared together in the dining room. The Tenant has resided at the property for 27 years and occupies one of three bedrooms located on the third floor.

36. He stated that since 2017, the Tenant has been causing issues at the residential complex by urinating on the floors, hallways, and walls. The Tenant refuses to effectively use the washroom facilities and has caused considerable damage to the house he resides in. He stated he has given the Tenant written and verbal requests to cease urinating in areas other than the washroom facilities however the Tenant has refused to do so. He stated they have tried to assist the Tenant but the Tenant does not respond to any form of communication.
37. In his testimony, S.S. stated the Tenant was provided with a letter dated September 17, 2018 addressing the Landlord's concerns with respect to the Tenant's behaviour and included demands of the Tenant as follows:
 - 1) This behaviour stop immediately by urinating in the toilet and not on the floor. If you make a mess, you must clean it up yourself.
 - 2) You take the time to clean and disinfect your room properly to eliminate the smell of urine and that you do this by Friday October 5, 2018.
38. S.S. stated a second letter was given to the Tenant on January 27, 2019. In this letter, the Landlord described the Tenant's behaviour had not improved and is ongoing. A duplicate of this letter was given to the Tenant on May 29, 2019. S.S. stated they discussed this behaviour with the Tenant's psychiatrist and the Tenant's nurse who assured them that the Tenant's conduct was not the result of any underlying medical or mental health issues or side effects from medications. The Landlord provided no documentary evidence to support that they had consulted with the Tenant's psychiatrist and nurse did either person appear at the hearing to corroborate this statement. While hearsay evidence is admissible in Board proceedings, it is often given less weight because the person making the statement (in this case, the doctor) cannot be cross-examined and cannot be observed while giving testimony, as such, little weight was given to this statement in my considerations.
39. On September 1, 2021, S.S. stated a final letter was provided to the Tenant outlining the Landlord's concern for the tenancy. In this letter, the Landlord reiterated the ongoing issues and raised concerns of the Tenant throwing items from the house that do not belong to him and leaving the doors unlocked which is a safety risk for the other residents. It goes further to say the Landlord has attempted to work with you and accommodate you to assist you to improve your behaviour and take responsibility for this conduct. However, your conduct has steadily grown worse. We have sought assistance from your support providers, and from others, however your conduct has not improved and you have made the house uninhabitable for anyone but yourself. It also included a proposal asking the Tenant to vacate the rental unit in return the Landlord would waive the cost of damages and give the Tenant \$5,400.00

to find alternate housing. S.S. stated that like the other letters, the Landlord receive no response from the Tenant.

40. In his testimony, S.S. stated the Tenant's behaviour became aggressive. As stated in the N7 Notice there was an altercation between the Tenant and another resident where the Tenant pushed the other resident causing an injury to which the other tenant required medical attention. The Tenant was arrested and charged with assault and uttering a death threat. S.S. stated the Tenant's aggressive nature has caused great concern among the other residents and their safety is paramount. The Landlord has an obligation to provide a safe and healthy environment for all its residents.
41. S.S. stated that in March 2022, the Tenant was involuntary admitted to CAMH and remained in their care until July 2022. He stated the Tenant's behaviour has improved since his return but he continues to have some issues and he is concerned that if the Tenant discontinues his medication the situation will worsen.

Evidence of the Landlord's Witness ('M.S.')

42. In his testimony, M.S. stated he is 84 years old and has lived at the residence for 20 years. He has known the Tenant for the same amount of time. He described the incident in detail, stating that on September 3, 2021 he witnessed the Tenant going through the garbage outside the building. He stated he forcefully told the Tenant to stop going through the garbage to which the Tenant looked at him angrily and responded with "I will kill you" and pushed him to the ground. He stated he hit his head which caused a gash requiring nine staples. He stated the assault was unprovoked as he only told the Tenant to refrain from going through the garbage and albeit forcefully it did not warrant such an aggressive response.
43. M.S. described a wariness of the Tenant and stated he is careful when near him but feels unsafe. He added that since the Tenant's return to the residence in July 2022, the Tenant has kept his distance. He said that while he would prefer that the Tenant leave the residence but if he is to stay, he would need the assurance that the Tenant remain on his medications.
44. In light of the Tenant's admission to the allegation, I only considered the testimony of M.S. as it relates to s.83 of the Act.

Tenant's evidence

45. The Tenant is 66 years old and has resided at the rental unit for 27 years. He has no family or friends in Toronto and prefers to keep to himself. He relies solely on the Ontario Disability Support Program for his monthly income.
46. In his testimony, the Tenant stated that he suffers with schizophrenia and now receives a medication injection every two weeks. He also suffers with incontinence which causes him to urinate urgently and because of his shaking he had been unable use the washroom

facilities properly. He stated that since his return to the residence from CAMH, he is now conscience of his condition and does his best to get to the toilet however there have been times when he has had to urinate in the bathtub. He knows it is his responsibility to clean up after himself and the medications are helping him think more clearly.

47. The Tenant has admitted to his conduct on September 3, 2022 but offered a different scenario of what occurred on that day. He stated M.S. called him a “garbage man” and said “stupid guy come to Canada. He added that he asked M.S. to move out of his way so he could exit the garbage shed but M.S. just stood there, so he pushed past him causing him to fall to the ground. He further added he would not do it again and as he understands his bail conditions, he does not see M.S. but he would like to apologize to him.
48. He stated he does not want to stop taking his medication as he knows he will become sick again if he does. He wants to preserve his tenancy and stay in his rental unit. He stated that if he is evicted, he will rent an apartment or a room but no where specifically.

Evidence of the Tenant’s Witness (‘M.M.’)

49. M.M. is a registered social worker and a support and intervention worker employed by CAMH. He stated he has direct knowledge of the circumstances regarding the Tenant and works with the Tenant’s psychiatrists to ensure his medical conditions and mental health are taken care of. He stated that subject to a community treatment order, the Tenant must conform to his medications as failure will result in a form 49 (involuntary admittance) and the Tenant will be admitted to the CAMH facility. He added the treatment order is in effect from July 22, 2022 to January 21, 2023. The Tenant will be reassessed prior to the termination date of the treatment order and there is a likelihood that the Tenant will remain on his medications indefinitely.
50. In his testimony, M.M. stated the Tenant is obligated to stay in contact with his doctors and take his medications. He stated the Tenant currently attends at CAMH once a week and his medications are provided to the Tenant in his rental unit. He added if the Tenant does not comply with these obligations; the police will be contacted and he will be brought back to the CAMH facility.
51. M.M. stated he has spoken to the Landlord with respect to the Tenant’s incontinence and shaking and has suggested that CAMH can assist by offering the services of an occupational therapist, they can assess the Tenant’s living arrangements for mobility impairments and suggest assisted devices. CAMH can also offer support for skills development to teach the Tenant how to clean up after himself. He stated he has also spoken to the Landlord with respect to alternative housing and should the Tenant be evicted the immediate remedy would be a shelter. He added the options are limited but CAMH will provide support.
52. The Tenant’s Legal Representative relied on a letter written by the Tenant’s psychiatrist, Dr. Martin Rotenberg. Dr. Rotenberg did not appear at the hearing as a witness for the Tenant and while hearsay evidence is admissible in Board proceedings, it is often given less weight because the person making the statement (in this case, the doctor) cannot be

crossexamined and cannot be observed while giving testimony. However, in this case, I have considered this letter and given it some weight as it relates to relief from eviction.

Analysis

53. Based on the Tenant's submissions, I find that the Tenant has substantially interfered with another tenant and the Landlord's lawful rights, privileges, and interests. I also find that the Tenant has negligently caused undue damage to the rental unit and/or residential complex and further find that the Tenant has seriously impaired the safety of another person at the residential complex. However, I am not satisfied that the Landlord has met its obligations as they relate to their duty to accommodate as set out in s. 2(1) of the *Human Rights Code* ('the *H.R.C.*').
54. While it is certainly true, the Tenant was uncooperative, unresponsive, and aggressive prior to receiving treatment, it appears the Landlord could have done more to recognize that the Tenant is a person that has a disability or disabilities and has needs that arise out of his disabilities. The evidence demonstrates that the Tenant visually presents as someone with a disability. The Tenant's refusal to allow treatments, and the poor state of cleanliness of his unit and the building should have caused the Landlord to recognize that the Tenant may require more support. The evidence establishes that the Landlord gave the Tenant warning letters and spoke briefly to his doctor with respect to the Tenant's conduct and concluded that his actions had no direct correlation to his mental illness.
55. The oral and documentary evidence by both parties was detailed, specific and consistent. It is apparent that the Tenant has disabilities, and it has been established that there is a causal link between his inability to effectively use the washroom facilities and those disabilities. The Tenant suffers with a psychiatric disorder, incontinence, and involuntary shaking; it is not illogical that these disabilities would contribute to his behaviour. The evidence suggests that the Tenant has been understanding and cooperative since he was provided with the proper medications and community supports.
56. A landlord has a duty to inquire or ascertain whether a tenant needs assistance before it attempts to terminate a tenant's tenancy. The Human Rights Tribunal, in *Robdrup v. J. Werner Property Management* 2009 HRTO 1372 (CanLII), has explained the duty to inquire in the Human Rights Code accommodation context as follows:

[26] In my opinion, when a respondent knows, or reasonably ought to know, that the applicant has disability-related needs, the respondent has a duty to inquire into the situation before making any adverse decision that may implicate the applicant's disability-related needs and adversely affect the applicant's status. In the present case, if the respondent had made such inquiries, the respondent would have learned more about the relationship between Scooter's barking and the applicant's disability and may not have characterized the barking as a disturbance, nor relied on it as a basis for seeking early tenancy termination.

[27] The evidence establishes that the respondent, through Ms. Werner and both building superintendents, was aware that Scooter provided assistance to the applicant in relation to the applicant's hearing disability. Ms. Werner acknowledged that, within three months of the tenancy, Ms. LePage advised her that Scooter was a service dog for the applicant. As such, the respondent was alerted to the fact that the applicant had disability-related needs and that Scooter played a role in assisting with those needs.

[28] When a respondent is notified that an individual has disability-related needs, the respondent has a duty to make meaningful inquiries about the disability-related needs to determine whether or not a duty to accommodate the individual exists: see *Wall v. The Lippé Group* 2008 HRTO 50 (CanLII) and *Oak Bay Marina Ltd. v. British Columbia* (Human Rights Tribunal) (No. 2) (2004), 51 C.H.R.R. D/68. It is well-established in human rights law that the duty to accommodate encompasses two components: 1. procedural (that being the process whereby the accommodation was considered) and 2. substantive (the accommodation that was achieved or the reasons for lack of accommodation), see: *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees' Union*, 1999 CanLII 652 (SCC), [1999] 3 S.C.R. 3 ("Meiorin") at paras. 62-68.

57. The structure of the *H.R.C.* is such that where a breach of s. 2(1) would otherwise occur there is a duty placed on a landlord to act to accommodate the characteristic that is the foundation of the otherwise discriminatory treatment. The duty to accommodate a disability is specifically referenced in the Code:

17 (1) A right of a person under this Act is not infringed for the reason only that the person is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of disability.

(2) No tribunal or court shall find a person incapable unless it is satisfied that the needs of the person cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

58. The duty to accommodate includes both a procedural and substantive element. The former requires the landlord to obtain information relevant to the Tenant's disability to determine how it might be accommodated. The latter requires demonstration that the tenant cannot be accommodated without undue hardship.

59. The Landlord's evidence is insufficient to establish that the Landlord made any essential inquiries for the accommodation of the Tenant under the *H.R.C.*. The Landlord prides itself on providing housing for those with chronic mental illness and should have the necessary supports in place to engage the Tenant in assistance. In my view, given the Tenant's disabilities, letters of warning would have no effect to change the behaviour. Had the

Landlord made inquiries it is possible that the Tenant could have gotten help sooner, and the issues could have been resolved more promptly. As a result, the Landlord's claim in the application for termination of the tenancy and compensation for undue damage is denied.

60. In the remainder of the Landlord's application, they are seeking termination of the tenancy for substantial interference and impairment of safety. Although I am satisfied, based on the Tenant's admission that he has substantially interfered with another tenant and the Landlord and seriously impaired the safety of another person, it is clear he has disabilities that gave rise to his behaviour. Further, the Tenant's disabilities gave rise to the Landlord's duty to inquire into his needs for accommodation.
61. The Act is remedial legislation and the courts have determined that evicting a tenant is a remedy of last resort. In the cases of *Sutherland v. Lamontagne*, [2008] O.J. No. 5763 (Div. Ct.) and *Paderewski Society v. Ficyk*, [1998], the Divisional Court stated, "to put somebody out of their home must, in my view, call for clear and compelling circumstances that it's no longer possible for the arrangement to continue."
62. Since the involuntary admission into CAMH, the Tenant now has the necessary supports in place to maintain his unit and is under a treatment order to take the required medication to control his psychiatric disorder. He also shows a willingness to continue with his medications and clean when required to do so.
63. The termination of a tenancy is a remedy of last resort and relief should be granted where the tenancy can be saved without overly prejudicing a landlord's interests. Given all the circumstances, I am persuaded that it would not be unfair to allow the Tenant to maintain his tenancy with conditions. However, I note that it is clear that it is crucial that the Tenant has community supports in place to facilitate him maintaining his housing.
64. As such, I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would not be unfair to grant relief from eviction subject to the condition(s) set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

It is ordered that:

L1 Application:

1. The Landlord's application is dismissed.

L2 Application:

2. The Tenant shall continue with the treatment plan as set out by CAMH .

3. In the event that the Tenant has accident with incontinence in the residential complex, the Tenant must immediately notify the Landlord and make best efforts to clean the affected area.
4. The Tenant shall not leave any doors of the residential complex open and unlocked.
5. The Tenant shall not engage in any physical altercation with another resident or employee of the Landlord.
6. If the Tenant fails to comply with the conditions set out in paragraphs 2, 3, 4 and 5 of this order, and for the duration of two (2) years from the date of this order, the Landlord may apply under section 78 of the Act for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.

November 20, 2023

Date Issued

Susan Priest

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.