



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

**Citation:** House of Friendship v Rowland, 2023 ONLTB 57181

**Date:** 2023-08-23

**File Number:** LTB-L-043726-23

**In the matter of:** 302, 75 CHARLES ST E  
KITCHENER ON N2G2P3

**Between:** House of Friendship Landlord

**And**

Frank Rowland Tenant

House of Friendship (the 'Landlord') applied for an order to terminate the tenancy and evict Frank Rowland (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 involving the production of an illegal drug, the trafficking in an illegal drug or the possession of an illegal drug for the purposes of trafficking (N6 Notice);
- 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 (N6 Notice);
- 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 (N7 Notice).

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 10, 2023.

The Landlord's agent Clayton Freeborn (CF), the Landlord's legal representative Peter Schroeder (PS) and witness for the Landlord Const. Katie Miller (CKM) and the Tenant's legal representative Rob Nixon (RM) attended the hearing.

As of 9:47 am, the Tenant was not present at the hearing although properly served with notice of this hearing by the LTB.

### Determinations and Reasons:

#### Preliminary Issue:

1. On the date of the hearing RN said that he attempted to meet with the Tenant yesterday and the Tenant did not attend. When the Tenant did not attend this hearing, RN said that he tried to contact the Tenant's and/or his case worker several times this morning and when the case worker responded to RN around 9:19 am, she advised him that the Tenant would unlikely attend the hearing.
2. RN said that he was not provided with any instruction from the Tenant despite attempts to connect and as a result, requested to be removed from the file and the matter to proceed as uncontested. RN did not request an adjournment and due to the efforts made and response from the Tenant's case worker Catherine Sciea, the matter proceeded as uncontested.

#### The Landlord's Application

3. The rental unit is a one-bedroom apartment in a multi-unit complex.
4. The tenancy began around October 2021 and the Tenant is still in possession of the rental unit.
5. The Landlord's disclosure included various communications, reports, videos and impact statements.
6. Although this order does not specifically address each piece of evidence individually or reference all of the testimony, I have considered all of the evidence and oral testimony when making my determinations.

#### N6 Notice of Termination – Illegal Drugs & Illegal Acts

7. As explained below, the Landlord has proven on a balance of probabilities some of the grounds for termination of the tenancy and the claim for compensation in the application as detailed below.
8. On May 31, 2023, the Landlord gave the Tenant an N6 notice of termination with a date of termination of June 30, 2023. The notice of termination in reason #1 alleges that the

Tenant or someone living with the Tenant has committed an illegal act or carrying on an illegal business at the residential complex involving the production and trafficking of an illegal drug and possession of an illegal drug for the purposes of trafficking. The Landlord also selected reasons #2 on the N6 notice, alleging the Tenant or someone living with the Tenant has committed an illegal act or carrying on an illegal business at the residential complex other than what is described in reason #1.

9. The Landlord alleges that on or around April 29, 2023 the Tenant stabbed another person at the residential complex and the Tenant was charged by Police with assault with a weapon and assault causing bodily harm. In addition, two guests of the Tenant were charged with possession of drugs for the purpose of trafficking during this incident. The Landlord provided the Occurrence Report WA23116828 and the Waterloo Regional Police Online report dated May 1, 2023 as evidence.
10. With respect to reason #1, in order for the Landlord's application to be successful, the Landlord must establish that events described in the N6 notice expressly relate to the acts of drug trafficking or production. If the Landlord cannot prove, on balance of probabilities, that the events in the notice relate to drug trafficking or production, I cannot issue an order evicting based upon an application made pursuant to that notice. Proof of the presence or use of drugs by the Tenant, other occupants, or guests, is not sufficient for the Landlord's application to succeed.
11. The N6 notice is non-voidable which means that the Tenant does not have the opportunity to correct the behaviour that gave rise to the N6 notice.

*Testimony and Evidence:*

12. CF is the Manager of Strategic Housing Initiatives for the Landlord and has first-hand knowledge of the circumstances surrounding this tenancy.
13. CF testified that on or around April 29, 2023 he was made aware of a stabbing incident at the residential complex, on the secured 3<sup>rd</sup> floor where the Tenant lives. He said the Tenant stabbed someone he permitted into the complex and individuals entering the complex must be permitted access via the main door as well as access to the 3<sup>rd</sup> floor.
14. It was the uncontested testimony of CF that the individual attended the rental unit where the Tenant emerged from his unit, which led to an altercation between the Tenant and the individual in the hallway outside the Tenant's unit. The Tenant then stabbed the individual. As evidence, the Landlord submitted video surveillance footage of the incident as described in detail by CF.
15. Then CF said the rental unit was secured by Police, pending further investigation of the unit and 2 knives and drug paraphernalia seized which resulted in charges. Two of the Tenant's guests were charged with possession of drugs for the purpose of trafficking and the Tenant charged with assault with a weapon and assault causing bodily harm. The

Waterloo Regional Police online reports indicated the Tenant's guests were arrested in relation to drug offences and Canadian currency and suspected fentanyl were seized.

16. CF testified that during this event, the Tenant's guests forced their way into another tenant's unit in an attempt to hid themselves and the drugs from Police. CF said the tenant told him that the 2 men asked the tenant to go the Tenant's unit to retrieve their drugs and possessions before the Police arrived. The tenant said he went to the Tenant's unit and saw the Tenant hiding the drugs in a pizza box and placed in the freezer. The witness statement also describes these events.
17. The Landlord submitted as evidence 4 impact statements from tenants and staff, all describing a similar recollection of the events that occurred on April 29, 2023 with respect to the stabbing and drugs. CF said that some of the authors of the statements were too fearful for their safety to attend the hearing to testify.
18. As explained at the hearing, it is well-established law that the Board, as a tribunal governed by the Statutory Powers Procedure Act ("SPPA"), may accept and consider hearsay evidence.
19. The courts have said that hearsay evidence is not to be treated as presumptively less reliable than direct evidence. In *Rex Diamond Mining v. Ontario Securities Commission*, 2010 ONSC 3926 (CanLII), the Court stated, at paragraph 4: "hearsay evidence is not, in law, necessarily less reliable than direct evidence"
20. However, I acknowledge that none of the authors of the witness statements were present at the hearing for further examination. I also note the Tenant did not attend the hearing to testify or defend his position.

*Testimony of the Landlord's Witness Const. Katie Miller (CKM)*

21. CKM is a Detective Constable with the Criminal Investigations Unit with the Waterloo Regional Police and the lead investigator in the circumstances of this tenancy.
22. CKM acknowledged that she is limited as to what she can say as this is an ongoing investigation before the Courts.
23. As lead investigator, CKM said that based on the evidence before her, she had reasonable grounds to lay the charges against the Tenant and his guests as detailed above.
24. CKM testified that the matter(s) are before the Court and she is unaware of any dates for proceedings.
25. The Landlord takes the position that the Tenant's actions have had a serious impact on other tenants and staff and many are fearful of the illegal activities that occur as a result of the Tenant's behaviour. N6 Notice Analysis
26. Section 61 of the Act essentially creates two different notices of termination for illegal acts:

those illegal acts where twenty days' notice is required; and illegal acts involving drug trafficking; drug production, or possession for the purposes of trafficking, where only ten days' notice is required. Here, the Landlord takes the position that the N6 notice served to the Tenant embraces all elements of the N6 notice for illegal act involving drugs for the purpose of trafficking and an illegal act other than that described in reason 1.

*Illegal Drugs:*

27. Based on the evidence before the Board, I am not satisfied on a balance of probabilities that the Tenant, occupant or guest has committed an illegal act that includes possession for the purposes of trafficking an illegal drug. I do not find that the Landlord has met the requirements of section 61(2)(a) of the Act.
28. The evidence is, at best, that the Tenant and or his guests were in possession of illegal drugs on the day in question. A person is deemed to have trafficked a drug if they sell, administer, give, transfer, transport, send or deliver the substance to another. The crux of the offence is that the individual has drugs, usually a large amount, to sell, not keep for personal use, and the courts generally distinguish between three levels of seriousness for trafficking: i) social sharing, ii) petty retail operation, and iii) full-time commercial operation.
29. In the instant case, evidence was not provided going to the quantity of drugs seized or the amount of money found in the unit. As well, no evidence was led that paraphernalia normally associated with drug trafficking, such as a digital scale or a debt list, was found in the unit. Further, the Landlord did not proffer any evidence, from staff or tenants, or even closed circuit video camera, going to a high level of traffic in and out of the unit as would be expected in a drug trafficking scenario.
30. Although the Landlord led evidence that the Tenant's guests were charged with possession of drugs for the purpose of trafficking and that the matter remains before the Courts, which I take to mean that there has yet to be a disposition of the charge(s), I am mindful that section 75 of the Act specifically states that "The Board may issue an order terminating a tenancy and evicting a tenant in an application referred to under section 69 based on a notice of termination under section 61 whether or not the tenant or other person has been convicted of an offence relating to an illegal act, trade, business or occupation."
31. Be that as it may, aside from the charge(s) laid against the Tenant's guests, the Landlord has presented no other evidence in support of its application and going to the allegation that the Tenant or his guests committed the offence of drug trafficking, production of an illegal substance, or possession for the purposes of trafficking. Absent additional evidence presented in support of its application, the existence of charges being laid is not, in my view, sufficient to meet the burden of proof and this portion of the Landlord's L2 application will be dismissed.

*Illegal Acts:*

32. As is stated in the Board's non-binding Interpretation Guideline # 9 Eviction for an Illegal Act or Business:

The term "illegal" is not defined in the RTA but would include a serious violation of a federal, provincial or municipal law. If the illegality is trivial or technical, the act or business or occupation might not be considered serious enough to warrant eviction.

33. An illegal act will be serious if it has the potential to affect the character of the premises or to disturb the reasonable enjoyment of the landlord or other tenants. [See: Samuel Property Management Ltd. v. Nicholson (2002), 2002 CanLII 45065 (ON CA), 61 O.R. (3d) 470 (C.A.), at paragraph 28, citing Swansea Village Co-operative v. Balcerzak (1988), 1988 CanLII 4844 (ON SC), 63 O.R. (2d) 741 at 745 (Div. Ct.).] The seriousness of this ground can be seen in the fact that there is no opportunity in section 61 for the tenant to avoid termination by rectifying the illegal act.
34. In other words, the Tenant held in his possession weapons which is an illegal act within the meaning of section 61(1) of the Act. Added to this, the Tenant engaged in a serious physical altercation when he stabbed a person he permitted into the residential complex, was charged on two counts, pending appearance before the Courts. Although no charges have been laid in this circumstance, based on the evidence before the Board I find that it is more likely than not that the Tenant has committed an illegal act, permitted at least two guests to commit illegal acts, and seriously impaired the safety of at least one person.
35. After considering the uncontested testimony of the Landlord and its witnesses and based on a balance of probabilities, I am persuaded that the Tenant committed an illegal act by having in his possession and using unauthorized and dangerous weapons. It is clear that possessing these types of weapons, has the potential to affect the character/disturb the reasonable enjoyment of the residential complex by the Landlord. The Tenant's guests, uninvited, sought refuge in another tenant's unit. The illegal acts in question therefore are serious and does impact the Landlord and other tenants and risks harmful effects.

36. The Landlord's request to terminate the tenancy and evict the Tenants is granted.

N7 Notice of Termination - Serious Impairment of Safety

37. In order to be successful on this ground, the Landlord must establish that the effect of the Tenant's actions threatens, or has threatened, the well-being or physical integrity of another person to such a degree that termination of the tenancy is reasonable in order to ensure the safety of others.

38. Based on uncontested evidence presented by the Landlord, I am satisfied that the behaviour of the Tenant, or someone visiting or living with the Tenant, has seriously impaired the safety of another person.
39. The allegations contained in the N7 notice contain similar allegations as the N6 notice with respect to the April 29, 2023 incident involving the Tenant and the physical altercation with the individual which resulted in the stabbing as described above.
40. The N7 notice also details the events that led the Tenant's 2 guests forcing their way into another tenant's unit in an attempt to hide themselves and drugs from the Police.

#### N7 Notice – Analysis

41. Subsection 66(1) of the Act states:

66 (1) A landlord may give a tenant notice of termination of the tenancy if,

- (a) an act or omission of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant seriously impairs or has seriously impaired the safety of any person; and
- (b) the act or omission occurs in the residential complex.

42. I am satisfied that the Tenant's and his guests' behaviour constitutes a serious impairment of safety. I find that the Landlord has met the burden of proof to establish that the Tenant seriously impaired the safety of others when he engaged in a violent altercation and his guests fled to another tenant's unit to hid from the Police, placing the tenant in danger. The behaviour of the Tenant and his guests occurred at the residential complex and threatens the well-being of other tenants and staff and poses serious safety concerns.

#### Daily Compensation

43. The Tenant was required to pay the Landlord \$1,078.36 in daily compensation for use and occupation of the rental unit for the period from July 1, 2023 to August 10, 2023.
44. Based on the Monthly rent, the daily compensation is \$26.96. This amount is calculated as follows: \$820.00 x 12, divided by 365 days.
45. The Landlord claims the Tenant is in arrears of rent in the amount of \$994.00 to August 31, 2023.
46. There is no last month's rent deposit.

#### Relief from Eviction

47. 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.
48. CF said that the Tenant has been heavily supported during his tenancy and there continues to be serious concern with the Tenant's behaviour and impact at the residential complex. As a result, CF does not believe a conditional order would be reasonable in this circumstance and the Tenant did not even attempt to work with his legal representative and appear before the Board.
49. The Tenant did not attend the hearing to provide evidence or to defend his position. The Landlord's agent testified he was not aware of any circumstances of the Tenant that would cause me to delay or deny a termination of tenancy or the eviction of the Tenant. The Landlord sought expedited termination of the tenancy due to the dangerous behaviour of the Tenant.
50. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

**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 August 31, 2023.
2. If the unit is not vacated on or before August 31, 2023, then starting September 1, 2023, 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 1, 2023. The Sherriff is requested to expedite the enforcement of this order.
4. The Tenant shall pay to the Landlord \$1180.00 (less any monies already paid to the Landlord), which represents compensation for the use of the unit from July 1, 2023 to August 31, 2023 including the filing fee.
5. The Tenant shall also pay the Landlord compensation of \$26.96 per day for the use of the unit starting September 1, 2023 until the date the Tenant moves out of the unit.
6. If the Tenant does not pay the Landlord the full amount owing on or before August 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from September 1, 2023 at 6.00% annually on the balance outstanding.



**August 23, 2023**

**Date Issued**

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**Dana Wren**

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 1, 2024 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.