



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

**Citation:** 351 Murray St. Holdings Corp. v Clayton, 2023 ONLTB 30616

**Date:** 2023-04-12

**File Number:** LTB-L-037296-22

**In the matter of:** D08-351 Murray Street Corunna,  
ON N0N 1G0

**Between:** 351 Murray St. Holdings Corp.

Landlord

**And**

Ernest (Ernie) Clayton

Tenant

351 Murray St. Holdings Corp. (the 'Landlord') applied for an order to terminate the tenancy and evict Ernest (Ernie) Clayton (the 'Tenant') because the Tenant or another occupant of the rental unit has committed an illegal act or has carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential complex.

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

This application was heard by videoconference and in-person in Corunna, Ontario on March 6, 2023.

The Tenant attended the in-person hearing with his support person Richard Beaupre ('RB') and his Legal Representative, Melissa Bradley. The Landlord was represented by their Legal Representative Kelly Hawkes. James Sweeney ('JS') and Carol Patricia Benson ('CPB') testified on behalf of the Landlord. The parties who attended on behalf of the Landlord attended the hearing by videoconference.

**Determinations:**

*Preliminary Issues – Certificate of Service*

1. Prior to the start of the hearing, I raised a preliminary issue with respect to the service of the Landlord's notice of termination. I had noted that the certificate of service outlined that the notice was sent by mail or Xpresspost to the Tenant on June 27, 2022.
2. The notice of termination outlined a termination date of July 20, 2022 and in accordance with Rule 3.9 of the Board's *Rules of Procedure* had the notice been mailed the deemed service date would have been July 2, 2022, which would have placed the notice outside the minimum 20 days required under s. 61(2)(b) of the *Residential Tenancies Act, 2006* (the 'Act').
3. The Landlord's Legal Representative submitted that the notice had actually been sent to the Tenant by Xpresspost mail and submitted evidence showing same.
4. The Tenant's Legal Representative submitted that the notice had been slid through a crack in the Tenant's door, which he provided to his worker. The Tenant could not recall when he received the notice and also agreed in cross-examination that he received the notice by mail as well.
5. On the basis of the evidence of both parties, I was satisfied that the Tenant was deemed served of the notice on June 28, 2022 as outlined under Rule 3.9(c).

*Preliminary Issue – In-Person Hearing Accommodation*

6. On November 28, 2022 the Tenant's Legal Representative requested that the format of the hearing be changed from electronic to in-person hearing because a video or telephone format would create significant challenges for the Tenant due to their accommodation needs. The request also included in-hearing accommodations including frequent breaks, the participation of the Tenant's community support worker in assisting the Tenant, and additional time to present evidence.
7. The Tenant's request was granted on November 30, 2022 and the parties were advised of same by the Board on December 1, 2022. On December 21, 2022, the Board contacted the Landlord's Legal Representative and requested confirmation as to whether or not the Landlord or any of their representatives would also be attending the in-person hearing. The Landlord's Legal Representative responded that same date advising the Board that both she and any representatives from her client would be attending the hearing by way of videoconference.
8. The Tenant's Legal Representative raised the fact that she had been given the impression by the Board that the hearing would be conducted entirely in-person, and not in a hybrid fashion. The Tenant's Legal Representative submitted that the Tenant's use of a computer may cause the Tenant hardship in being able to participate in the hearing.
9. Having reiterated to the Tenant's Legal Representative that the Tenant is being permitted the support of his Advocacy & Planning Support Worker and that he will be given frequent

breaks and sufficient time to present evidence, the Tenant was offered the chance to request an adjournment should the accommodation provided not be sufficient in ensuring a fair hearing.

10. The Tenant's Legal Representative submitted that she and her client were prepared to conduct the hearing that day so long as breaks and sufficient time to present evidence was provided.

*Hearing – Landlord's Evidence*

11. The Tenant was in possession of the rental unit on the date the application was filed.
12. On June 27, 2022, the Landlord gave the Tenant an N6 notice of termination deemed served June 28, 2022. The notice of termination contains the following allegations:
  - a) On June 18, 2022, the Tenant assaulted a tenant from a different unit within the residential complex. The assault consisted of spitting on the tenant and then striking her with his fists. Police were called and the Tenant was charged.
  - b) On June 21, 2022, while banging on the window of his back door, the Tenant was holding a knife and saying to that he was going to "kill" the same female tenant included in the June 18, 2022 incident. Police were called and the Tenant was taken into custody by the police.
13. The residential complex consists of four separate town houses that have approximately 810 units.
14. CPB testified that she lives next door to the Tenant and has lived in her unit since February 13, 2022. Her partner, JS moved into the unit in December of 2021.
15. CPB testified that on June 18, 2022 between 7:00 pm and 7:30 pm, she had been in her back patio area, which is a space shared with the Tenant when she observed the Tenant exit his back door and started calling CPB names such as "whore" and "bitch".
16. CPB testified that the Tenant started leaning towards her at the end of the patio block and proceeded to spit in her face. CPB testified that she tried to wipe it off of her face while the Tenant continued to call her names.
17. CPB testified that the Tenant then threw a punch at her, catching her on her jaw and shoulder. CPB testified that she started crying and screaming which alerted her neighbours who attended at the scene to assist.
18. CPB testified that the Tenant was preventing her from going back into her unit until the neighbour arrived and assisted her. The Tenant continued to curse and call CPB names while the neighbours tried to calm him down. CPB testified that the Tenant started to kick over items in the backyard to allegedly blame her for the destruction of the property.
19. CPB testified that she was eventually able to get back into her unit and the police were called. The police took her witness statement, and the Tenant was arrested. CPB testified

that it took multiple officers to complete the arrest of the Tenant. CPB testified that the police told her that the Tenant would be kept in custody overnight and that she would be called when he was released.

20. CPB testified that on June 21, 2022, she was supposed to work that evening when she had gone outside of her unit onto the back patio and had observed the Tenant banging on his door and window and kicking his door trying to get her attention.
21. CPB testified that she also heard the Tenant swearing at her and when she looked at his door again, she observed the Tenant peel back his curtain brandishing a knife. CPB was able to take a photo with her cell phone and those photos were entered into evidence.
22. CPB testified that she immediately went back into her unit and called the police. CPB testified that police attended at the unit and that multiple officers were again required to arrest the Tenant.
23. JS also testified on behalf of the Landlord and testified that on June 18, 2022, he had just come back to the unit when he was advised about the incident that occurred. He did not observe the incident and arrived at the unit when police were there.
24. JS testified that he was working, driving his truck near Cornwall when he was advised by CPB about the June 21, 2022 incident.

#### *Tenant's Evidence*

25. The Tenant testified that he is 62 years old and has lived in the rental unit for 6 years. A copy of the residential lease agreement was entered into evidence that outlined that the tenancy commenced on March 1, 2017.
26. The Tenant testified that his current rent is \$780.00 and that it is paid directly to the Landlord from the Ontario Disability Support Program (ODSP).
27. The Tenant testified that he has a support person, RB who also acts as a trustee who was provided to him by the Family Counselling Centre ('FCC'). The Tenant testified that RB and the FCC assists him with paying his bills and for groceries.
28. The Tenant testified that he has a mental health disability and that he cannot read. He testified that RB assists him with reading documents on his behalf.
29. The Tenant testified that on June 18, 2022 he had been at a restaurant in Corunna having lunch and drinking beer when he went back to the unit at around noon to take some medication. The Tenant testified that he had returned to the restaurant and had a couple more drinks.
30. He testified that he came home around 9:00 pm and laid down and had waited a couple of hours to get everything out of his system. The Tenant testified that he gets dizzy spells and that he was having one that evening.

31. The Tenant testified that he did not spit in CPB's face as he cannot spit because he has no top teeth. The Tenant denied having any interaction with CPB and denies being arrested. That said, the Tenant was able to recall some of his release conditions including the requirement to remain apart from CPB and to not interact with her.
32. The Tenant testified that he did not recall what happened the evening of June 21, 2022 but did recall going to the hospital on June 22, 2022.

### *Analysis & Findings*

33. Section 61 of the Act states:

*61 (1) A landlord may give a tenant notice of termination of the tenancy if the tenant or another occupant of the rental unit commits an illegal act or carries on an illegal trade, business or occupation or permits a person to do so in the rental unit or the residential complex.*

34. The Tenant's Legal Representative took issue with the fact that JS's evidence about the incidents were hearsay because he was not present for the incident. She also raised the fact that CPB testified that JS returned to the unit shortly after the June 21, 2022 incident as well, which contradicted her evidence.
35. The Tenant's Legal Representative submitted that TSL-21867-21, which considered the dangers of hearsay evidence as considered in *Manikam v. Toronto Community Housing Corporation*, 2019 ONSC 2083 (CanLII) should be applied in this case with respect to JS's evidence.
36. I reject this argument from the Tenant's Legal Representative. While JS did not provide direct evidence of the events as alleged, CPB testified on behalf of the Landlords and provided direct evidence of both incidents. As such, I find that this case can be distinguished from TSL-21867-21 and *Manikam*.
37. Further, while there may have been some minor discrepancies between CPB's direct evidence and that of the notes she took of the incidents that were entered into evidence, the evidence regarding the allegations of the assault by the Tenant and the subsequent threat I find to have been clear and consistent.
38. The Tenant on the other hand flat-out denies there having been any altercation whatsoever. Whether this testimony was given as a result of the Tenant's disability was unclear, but the Tenant seemingly had no recollection of the events or denied that they occurred. That said, the Tenant was seemingly aware of the contents of his release conditions and his Legal Representative agreed in submissions that the Tenant had been arrested.
39. On the basis of the evidence of both parties, I am satisfied on a balance of probabilities that the events as testified to by CPB with respect to the incidents as alleged occurred.

*Did the Tenant Commit an Illegal Act?*

40. The Landlord's Legal Representative asked me to consider the Board case of EAL-1876811 where the member in that decision reviewed the Supreme Court decision of *R v. Clemente* which states:

*"The intent required under s. 264.1(1)(a), which is aimed at preventing "threats, can be framed in either of the two ways put forward. Firstly, a serious threat to kill or cause serious bodily harm must have been uttered with the intent to intimidate or instill fear. Conversely, such a threat uttered with intent to intimidate or cause fear musty have been uttered with the intent that it be taken seriously"*

41. Within the context of this case, I find that the Tenant committed an assault when he spit on and punched CPB. Section 265 of the *Criminal Code of Canada* states:

*265(1) A person commits an assault when*

*a) Without the consent of another person, he applies force intentionally to that other person, directly or indirectly.*

42. With respect to the June 21, 2022 incident, while the photograph CPB took of the Tenant brandishing the knife from his window was not of great quality, I find on a balance of probabilities that the Tenant committed an illegal act by uttering this threat at CPB.
43. Within the context of the fact that this incident occurred three days after the assault, I find that CPB had a reasonable belief that the Tenant intended to cause her harm that day.
44. As such, on a balance of probabilities I am satisfied that the Tenant committed an illegal act as alleged by the Landlord on both June 18, 2022 and June 21, 2022.

*Daily Compensation*

45. The Tenant was required to pay the Landlord \$6,011.27 in daily compensation for use and occupation of the rental unit for the period from July 21, 2022 to March 6, 2023.
46. Based on the Monthly rent, the daily compensation is \$26.25. This amount is calculated as follows: \$798.44 x 12, divided by 365 days.
47. The Landlord collected a rent deposit of \$745.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$16.45 is owing to the Tenant for the period from January 1, 2021 to March 6, 2023 .
48. In accordance with subsection 106(10) of the Act the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

*Section 83 Considerations*

49. The Tenant's Legal Representative submitted that should I find that the Landlord's application is successful that I should grant relief in accordance with s. 83 of the Act and deny eviction, or to grant relief from eviction subject to conditions in accordance with s. 78 of the Act.
50. The Tenant's Legal Representative submitted that the Tenant would most likely be homeless if he were evicted and submitted that in light of the Tenant's various disabilities and current income supports that eviction could lead to further issues occurring with the Tenant.
51. The Tenant's Legal Representative also submitted that the Landlord knew of or ought to have been aware of the Tenant's disabilities and should have provided an accommodation to the Tenant with respect to the *Human Rights Code*. She relies on the Divisional Court decision of *Reisher v. Westdale Properties*, 2023 ONSC 1817 and submits that the Landlord should have requested and obtained all of the Tenant's information regarding his disability, as they were aware of the fact that the Tenant was assisted in obtaining the rental unit by FCC.
52. The Landlord's Legal Representative acknowledges that the Tenant has a disability but had asked me to consider the decision in EAL-18768-11 wherein a tenant was determined to be disabled however, the member in that decision made the determination that the fact that the tenant has a disability does not mean that the standard of conduct needs to be relaxed.
53. Further, the Landlord's Legal Representative submitted that the actions of the Tenant have affected the character of the residential complex and everyone's reasonable enjoyment of same.
54. JS and CPB testified that the Tenant will yell at other tenants and call them names. The Landlord's Legal Representative was permitted to call any subsequent evidence with respect to any illegal acts however, the Landlord's Legal Representative did not do so.

*Human Rights Code Considerations*

55. In *Reisher* the court outlined that a landlord has a duty under s. 2(1) of the *Human Rights Code* to accommodate the characteristic that is the foundation of the otherwise discriminatory treatment where there is a breach.
56. A duty to accommodate includes both procedural and substantive elements. A landlord must obtain information relevant to the tenant's disability to determine accommodation and must accommodate up to the point of undue hardship.
57. With respect to this case, the Tenant's Legal Representative submitted that the Tenant applied for the unit with the assistance of FCC and as such, the Landlord knew or ought to have known that the Tenant needed to be accommodated. The Tenant testified he could not read so he required assistance from FCC in completing his application for the unit.

58. That said, from the evidence of both parties I am unsure as to whether these incidents occurred as a result of the Tenant's disability. At no time during the hearing was a nexus ever created between the incidents that occurred and the Tenant's disability.
59. Further, the Tenant's Legal Representative never provided a suggestion with respect to just what accommodation the Landlord should have done or should continue to do in order to "accommodate the characteristic that is the foundation of the otherwise discriminatory treatment".
60. As such, while I am obligated to review the Tenant's circumstances in accordance with s. 83 of the Act, I am not satisfied that the Landlord has discriminated against the Tenant due to his disability.

*Section 83 Findings*

61. While the Tenant has seemingly not had any further incidents with CPB or any other tenants since June of 2022, the concerning aspect of the Tenant's evidence is that he both denied the incidents ever happening and didn't remember them happening.
62. Further, neither the Tenant nor CPB or JS provided evidence as to why these incidents occurred in the first place. The Landlord's Legal Representative submitted that the Tenant confronted CPB while JS was not in the unit because the Tenant knew that CPB was alone however, I do not find there to have been credible evidence to support this assertion.
63. That said, these incidents seem unprovoked. The Tenant clearly has some sort of issue with CPB that was never entered into evidence. The Tenant has shown no remorse or even an awareness of the incidents. The incidents were serious and CPB now has a real fear of the Tenant.
64. As such, I am not satisfied that the Tenant will refrain from committing any similar incidents in the future and the tenancy will be terminated. That said, in light of the Tenant's disabilities and the fact that he has various supports in place at his current unit, the eviction will be postponed until June 30, 2023.
65. 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 postpone the eviction until June 30, 2023 pursuant to subsection 83(1)(b) of the Act.

**It is ordered that:**

66. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before June 30, 2023.



67. If the unit is not vacated on or before June 30, 2023, then starting July 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
68. 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 July 1, 2023.
69. The Tenant shall pay to the Landlord \$5,249.82, which represents compensation for the use of the unit from July 21, 2022 to March 6, 2023, less the rent deposit and interest the Landlord owes on the rent deposit.
70. The Tenant shall also pay the Landlord compensation of \$26.25 per day for the use of the unit starting March 7, 2023 until the date the Tenant moves out of the unit.
71. As of the date of the hearing, the amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the amount the Landlord is entitled to by \$(761.45).
72. However, the Landlord is authorized to deduct from amount owing to the Tenant \$26.25 per day for compensation for the use of the unit starting March 7, 2023 to the date the Tenant moves out of the unit.
73. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

**April 12, 2023**

**Date Issued**

Jagger Benham

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 January 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.