



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

**Citation:** Pinedale Properties Ltd. v Thompson, 2023 ONLTB 30265

**Date:** 2023-04-11

**File Number:** LTB-L-016654-23

**In the matter of:** 1908, 7 CRESCENT PL  
EAST YORK ON M4C5L7

**Between:** Pinedale Properties Ltd. Landlord

**And**

Scott Thompson Tenant

Pinedale Properties Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Scott Thompson (the 'Tenant') because:

- the Tenant or another occupant of the rental unit has committed an illegal act or has carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential complex.

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

This application was heard by videoconference on March 30, 2023.

Only Mario Gambelic, for the Landlord, and the Landlord's Legal Representative, Kirsten Ley, attended the hearing.

As of 10:22 a.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy in the application.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The monthly rent is \$1,133.14.
4. Based on the Monthly rent, the daily compensation is \$37.25. This amount is calculated as follows: \$1,133.14 x 12, divided by 365 days.
5. The Landlord collected a rent deposit of \$1,095.64 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$27.32 is owing to the Tenant for the period from April 1, 2022 to March 30, 2023 In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.
6. On January 27, 2023, the Landlord gave the Tenant an N6 notice of termination, the termination date in the notice is February 16, 2023. The notice of termination contains the following allegations:
  - On January 25, 2021, the Tenant was arrested for assaulting the tenant of unit #2008; a condition of bail was the Tenant must stay away from the 20<sup>th</sup> floor of the residential complex.
  - On May 2, 2021, the Tenant was arrested and charged with Fail to Comply with Release Order, and assault.
  - On July 17, 2022, the Tenant of #2008 reported that the Tenant was harassing and attempting to break into unit #2008, and that the police had been called. Being on the 20<sup>th</sup> floor is a breach of the Tenant's bail conditions.
  - On December 20, 2022, the tenant of unit #2008 reported that the Tenant was repeatedly banging on their door. This constitutes harassment and is a breach of the bail conditions by being on the 20<sup>th</sup> floor.
  - On December 25, 2022, the tenant of #2008 reported that the Tenant was repeatedly banging on their door. This constitutes harassment and is a breach of the bail conditions by being on the 20<sup>th</sup> floor.
  - On January 3, 2023, the tenant of #2008 reported that the Tenant was repeatedly banging on their door, and they did not feel safe in the apartment because of the Tenant's repeated actions. This constitutes harassment and is a breach of the bail conditions by being on the 20<sup>th</sup> floor.
  - On January 13, 2023, the tenant of #2008 reported that the Tenant was repeatedly banging on their door, and reiterated that they no longer felt safe in their apartment; they are not able to sleep well and are terrified for their safety. This constitutes harassment and is a breach of the bail conditions by being on the 20<sup>th</sup> floor.
  - On January 19, 2023, a Neighbourhood Community Officer of 55 Division confirmed to the Landlord that the Tenant cannot under any circumstances attend the 20<sup>th</sup> floor; the Tenant is in breach of his bail conditions and will be charged with Fail to Comply with Release Order. The officer also confirmed that the incidents and

charges identified on January 25, 2021 and May 2, 2021, were still before the courts.

By engaging in the above conduct, the Tenant has committed illegal acts within the residential complex, specifically criminal harassment contrary to section 264, and Fail to Comply with Release Order contrary to section 145(5) of the *Criminal Code*, (R.S.C., 1985, c.C-46).

7. The property manager, Mario Gambelic (MG), testified on behalf of the Landlord to the above events and pointed to supporting documentation in the Landlord's 35-page evidence package that had been served to the Tenant. The documentation included emails from the tenants in unit #2008, a police log of the complaints received from the tenants of unit #2008 about the Tenant, emails from Neighbourhood Community Officer Shawn Chow, and an email from a support worker, A. Karshi, from an agency previously assisting the Tenant, part of the housing connections-at-home program. Importantly, an email from Officer Chow dated January 18, 2023, confirms that the Tenant's bail condition to not attend the 20<sup>th</sup> floor is still in effect; "If he ever goes to the 20<sup>th</sup> floor he is in breach of his conditions. This results in a charge called Fail to Comply with Release order. This is a criminal charge with very little wiggle room. He in fact has been charged with breaching that same condition before".
8. MG testified that the original tenant in unit #2008, was transferred to another unit by the Landlord in January 2022; unit #2008 was re-rented approximately March/April 2022. These tenants were relocated by the Landlord because the family, which included a child, feared for their safety. The unit was then re-rented in approximately October 2022; this tenant was moved to another unit on February 1, 2023 due to the continuing problems with the Tenant breaching bail conditions and attending at the unit, harassing and banging on the door. All the tenants from unit #2008 that the Landlord moved to other units have not had a problem with the Tenant since they moved. Unit #2008 has remained vacant since February 1, 2023; the Landlord cannot re-rent it because of the Tenant's behaviour towards all tenants in that unit. The only way the Landlord can rent out unit #2008 is if the Tenant is evicted, only then will the reasonable enjoyment of tenants of #2008 not be interfered with.
9. The Landlord's Legal Representative submitted that, the illegal acts are the ongoing breaches of the bail conditions by the Tenant which constitute criminal harassment of the tenants in unit #2008. The Tenant is fixated on this unit, it does not appear to matter who is in the unit, thus, this behaviour will continue; it has already gone on since the first incident in May 2021. The Tenant has been charged with criminal harassment/mischief under the *Criminal Code*, as well as breaches of his bail conditions; all of these affect other tenants in the building. As stated by the court in *North Avenue Road Corporation v. Travares*, 2015 ONSC 6986 at paragraph 36, "as set out in *Hassan v. Niagara Housing Authority*, [2000] O.J. No. 5650, the landlord has a positive obligation to provide the (future) tenant with

quiet enjoyment and take reasonable actions against a tenant that denies a neighbouring tenant enjoyment of the premises”

10. The Landlord's Legal Representative further submitted that, although never having been formally notified of any disabilities by the Tenant, the Landlord reached out to a support agency that was assisting the Tenant in the past and was told to proceed with the necessary steps for eviction against the Tenant. The Landlord's attempts at accommodation have been unsuccessful, as transferring the original tenant in unit #2008 that the Tenant had issues with has not resolved the problem; the Tenant is focussed on the unit itself, as such the issue cannot be resolved. The Landlord is suffering financially and will continue to do so since unit #2008 cannot be re-rented out with the Tenant living in the complex. The Landlord is requesting the standard 11-day eviction with expedited enforcement due to the ongoing behaviours of the Tenant.

#### Analysis

11. Section 61 of the *Residential Tenancies Act, 2006* (the 'Act') says:
  - (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.
    - (2) A notice of termination under this section shall set out the grounds for termination and shall provide a termination date not earlier than,
      - (a) the 10th day after the notice is given, in the case of a notice grounded on an illegal act, trade, business or occupation involving,
        - (i) the production of an illegal drug,
        - (ii) the trafficking in an illegal drug, or
        - (iii) the possession of an illegal drug for the purposes of trafficking
      - (b) the 20<sup>th</sup> day after the notice is given, in all other cases.
12. A landlord who gives a tenant a notice of termination pursuant to section 61(1) of the Act must establish on a balance of probabilities that either the tenant or an occupant committed the illegal act or the tenant or an occupant permitted a person to commit the illegal act.
13. Based on the uncontested testimony and evidence I am satisfied on a balance of probabilities that the Tenant has committed illegal acts and these acts took place in the residential complex; the Tenant has repeatedly attended the 20<sup>th</sup> floor and harassed

tenants of unit #2008 which is in breach of his bail conditions. The Tenant has been charged with the related criminal offences, and these charges are still before the court, thus the bail conditions remain in effect until such a time as the court process is concluded. I am also satisfied on a balance of probabilities that the Tenant's behaviour, breaching his bail conditions by attending the 20<sup>th</sup> floor and harassing tenants of unit #2008, will continue; in an email dated August 15, 2022, Office Shawn Chow stated "I am of the belief that he [the Tenant] does not even realize these tenants are not the ones he victimized last year and will continue to fixate on the unit no matter who's in there".

14. I also find that this uncontested testimony and evidence meets the test under *Bogey Construction Limited v Boileau* [2002] O.J. No. 1575 (Ont. Div. Ct.), that the proof is to be commensurate with the gravity of the allegation(s), although there is no direct testimony from officers or the tenants from unit #2008, documentary evidence more than establishes the allegations in the notice of termination and the likelihood that this behaviour against any tenants in unit #2008 will continue.

#### Relief from Eviction

15. 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 not be unfair to postpone the eviction until May 31, 2023, pursuant to subsection 83(1)(b) of the Act.
16. Based on the undisputed testimony and evidence before me, I find that the Tenant's behaviour has not stopped or improved since originally charged for the incident in May 2021; the Tenant has continued to breach his bail conditions by attending the 20<sup>th</sup> floor and harassing whoever is living in unit #2008. The case law establishes that the safety and enjoyment of all tenants in the building is paramount, as well as it being a positive duty on the Landlord to take action against continued misbehaviour by a tenant that affects others.
17. Although eviction is a harsh remedy, the safety of others in the building is paramount, as set out by the Court in *Joseph v. Toronto Community Housing Corp.*, [2013] O.J.No.395. In this case, the tenant appealed, in part, alleging that the Board did not consider relief from forfeiture as it was obligated to do pursuant to s.83(2) of the *Residential Tenancies Act*. The Divisional Court dismissed the appeal finding that the "Board clearly considered whether eviction would be unfair having regard to all the circumstances. In particular, the Board considered that the well-being of the community as a whole and the tenants in that community take precedence over the individual's rights to ask for relief from forfeiture in the circumstances. The Board was entitled to so conclude (see *Metropolitan Toronto Housing Authority v. Ricky Owusu-Ansah*, [1995] O.J. No.3864)".
18. In *Walmer v Wolsch*, (2003), 176 O.A.C. 298 (DC) the Ontario Divisional Court held that the Tribunal was required to comply with section 17 of the Human Rights Code in full in its decision-making and in particular when exercising its discretion under s. 84 of the Tenant

Protection Act [now section 83 of the Residential Tenancies Act] as to whether it would be unfair to the landlord not to evict a person suffering from a disability. The Tribunal must consider whether any disruption in the enjoyment of other tenants could be sufficiently alleviated by a reasonable accommodation of the disabled tenant without undue hardship to the landlord (paragraphs 16 to 36).

19. Section 17(1) of the *Human Rights Code (Ont.)* (the 'OHRC') R.S.O. 1990, c. H.19., provides that a right of a person was not infringed for the reason only that the person was incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of disability. In other words, there is no violation of the Code if the tenant is unable, because of a disability, to "... act as is reasonably required of a tenant" ( *Walmer v Wolsch*). Section 2(1) of the OHRC provides that every person had the right to equal treatment respecting the occupation of accommodation (housing) without discrimination because of, inter alia, disability.
20. Therefore, the Board has a duty to follow the OHRC and the Landlord has a duty to accommodate the Tenant based on his disability, and this accommodation must be to the point of undue hardship.
21. Based on the uncontested testimony and evidence before me, I find that although the accommodation appears to be for the tenants in unit #2008 that are being affected by the Tenant's behaviour, it is in essence a means of accommodating the Tenant. The Tenant initially had issues with the tenant who resided in the unit in May of 2021 and the problems persisted until the Landlord relocated this tenant in January 2022, therefore the Landlord removed what was believed to be the Tenant's trigger. However, when two other sets of tenants were moved into unit #2008 the Landlord was required to also relocate them because the Tenant was fixated on any tenants who resided in unit #2008. I find it is undue hardship on the part of the Landlord to re-rent unit #2008 knowing that any tenants that live there will ultimately have to be relocated because of the Tenant's continued breaching of his bail conditions and attending the 20<sup>th</sup> floor to disrupt any tenants in unit #2008. The only remedy left to the Landlord is evicting the Tenant so unit #2008 can be re-rented to persons who are able to enjoy their home. Further, the Tenant did not attend the hearing to provide any other considerations, and there is no evidence that moving the Tenant to a different unit would change this behaviour, or that the Tenant would agree to be moved. The evidence before me is that the Tenant will continue to fixate on unit #2008, which leaves eviction as the only remedy.
22. Although eviction is necessary, I find a delay in the termination date to May 31, 2023, is warranted, into account the possibility of any mental health conditions, to allow the Tenant time to reach out to agencies that may be able to assist him in finding suitable accommodations. Although I have already found that the Landlord met the test of under hardship, although this delay will result in more financial costs to the Landlord by not being able to re-rent unit #2008 until the Tenant vacates, when weighed against the

potential mental state of the Tenant and that he is a long-term tenant, there is more prejudice to the Tenant if evicted quickly and ending up on the streets that a short-term financial burden on the Landlord.

**Expedited Enforcement**

23. The Landlord's Legal Representative requested expedited enforcement of the eviction because of the Tenant's continued breaches and the inability for the Landlord to re-rent unit #2008.
24. Section 84 of the Act says:  
Subject to clause 83 (1) (b), the Board shall, in an order made under section 69 based on a notice given under subsection 61 (1) that involves an illegal act, trade, business or occupation described in clause 61 (2) (a) or based on a notice given under section 63, 65 or 66, request that the sheriff expedite the enforcement of the order.
25. For the reasons that follow, I grant the Landlord's Legal Representative's request for expedited enforcement of the eviction order.
26. I find the request for expedited enforcement to be reasonable; the Tenant has received already received extra time, due to the delay in the termination date, any further delay is not warranted.
27. The Landlord did not seek the application filing fee or per-diem compensation for use of the unit since the termination, as such these do not form part of this order.
28. This order contains all 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 May 31, 2023.
2. If the unit is not vacated on or before May 31, 2023, then starting June 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 June 1, 2023.

**April 11, 2023**

**Date Issued**

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Diane Wade

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 December 1, 2023 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.