



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

Citation: Toronto Community Housing Corporation v Desousa, 2023 ONLTB 26258

Date: 2023-03-20

File Number: LTB-L-074422-22

In the matter of: 1309, 101 HUMBER BLVD
YORK ON M6N2H5

Between: Toronto Community Housing Corporation Landlord

And

Aurelio Desousa Tenant

Toronto Community Housing Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Aurelio Desousa (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 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.

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 9, 2023. Only the Landlord's legal representative, J. Baradar-Gohari, and the Landlord's witnesses, Det. R. Di Nino, and Special Constable K. Swaich, attended the hearing. As of 1:30 p.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. Therefore, the tenancy is terminated on March 25, 2023.

2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On November 22, 2022, the Landlord gave the Tenant an N6 and N7 notice of termination. The notices of termination contain the following allegations:

- On July 31, 2022, the Tenant was observed choking another person in the residential complex.

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- On August 3, 2022, the Tenant was observed attempting to stab another person at the residential complex.
4. Special Constable K. Swaich testified that he is security personnel at the residential complex. On July 31, 2022, he observed two people fighting in front of an elevator. He observed the Tenant choking the neck of another person and the person being choked was slapping the Tenant to escape.
 5. Det. R. Di Nino testified that he is investigating the incident that took place on August 3, 2022. His investigation revealed that the Tenant got into a verbal altercation with another tenant. The altercation escalated and the victim tenant picked up a garbage lid and piece of wood to block the accused from attacking her. The Tenant charged towards the victim tenant and attempted to stab her. However, an unknown male, prevented the Tenant from stabbing the victim tenant and removed the knife from him. The Tenant was charged with assault and assault with a weapon. Also submitted into evidence were stills of the surveillance footage of the incident. The stills showed the Tenant attempting to stab the victim tenant while she was cowering on the ground.

N6 Notice of Termination

6. The section of the *Residential Tenancies Act, 2006* (the 'Act') that governs this notice is subsection 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.

7. Based on the uncontested evidence of the Landlord, on a balance of probabilities, I find that the Tenant has committed an illegal act in the residential complex by committing assault and assault with a weapon.

N7 Notice of Termination

8. Pursuant to section 66 of the Act, a landlord may give a tenant a notice of termination if an act or omission of the tenant seriously impairs the safety of another person, provided that the act or omission complained of occurs in the residential complex.
9. In order to be successful on this ground, the Landlord must establish that the effect of the Tenant's actions threatens the wellbeing 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. In other words, the question to be answered is whether the tenant's actions put someone at serious risk of physical harm.
10. In my view, the Tenant's conduct of July 31, 2022 and August 3, 2022, in choking a person and attempting to stab another, constitutes a serious impairment of safety to another person. The Tenant's conduct on these occasions was dangerous and reckless.

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11. Based on the evidence before me, I am satisfied, on a balance of probabilities, that the Tenant engaged in the conduct as detailed in the N7 notice of termination and, as such, has seriously impaired the safety of another person in the residential complex.

Section 83 Considerations

12. 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.
13. I am satisfied that there would be significant prejudice to the Landlord and other tenants if the tenancy continued. Both incidents demonstrate a pattern of dangerous behaviour posing a serious risk to the health and safety of the other occupants at the residential complex. Further, the Tenant did not attend to disclose any circumstances to make a finding that relief from eviction is warranted. As such, relief shall not be granted.

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 March 25, 2023.
2. If the unit is not vacated on or before March 25, 2023, then starting March 26, 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 March 26, 2023. **The Sherriff is requested to expedite the enforcement of this order.**
4. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing on or before March 25, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 26, 2023 at 5.00% annually on the balance outstanding.

March 20, 2023 _____ **Date Issued**

Camille Tancioco

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 September 26, 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.

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