



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

Citation: Hladysh v Horner, 2023 ONLTB 26215

Date: 2023-03-17

File Number: LTB-L-058530-22

In the matter of: 429, 79 JAMES ST S
HAMILTON ON L8P2Z1

Between: Genevieve Hladysh Landlord

And

Michael Horner Tenant

Genevieve Hladysh (the 'Landlord') applied for an order to terminate the tenancy and evict Michael Horner (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;
- 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;
- 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 application was heard by videoconference on March 9, 2023. The Landlord's legal agent, G. Hladysh, and the Tenant attended the hearing.

Preliminary Issues:

1. On December 4, 2022, the Landlord gave the Tenant an N5 notice of termination alleging that the Tenant substantially interfered with the reasonable enjoyment of another tenant and wilfully or negligently caused damage to the premises. The Landlord filed this application on October 18, 2022.

2. Section 70 of the *Residential Tenancies Act, 2006* (the 'Act') states that:
A landlord may not apply to the Board for an order terminating a tenancy and evicting the tenant based on a notice of termination under section 62, 64 or 67 before the seven-day remedy period specified in the notice expires.
3. As the Landlord has applied for an order terminating the tenancy before the seven-day remedy period in the N5 Notice, the Landlord cannot rely on the N5 Notice to terminate the tenancy. As such, the only live issue is the N7 Notice.

Determinations:

4. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. However, I find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order
5. The Tenant was in possession of the rental unit on the date the application was filed.

N7 Notice of Termination

6. On October 3, 2022, the Landlord gave the Tenant an N7 notice of termination. The notice of termination contains the following allegations:
 - On October 1, 2022, the Tenant was uttering threats and knocking on other tenants' doors. As such, other tenants expressed that they are afraid to leave their rooms in fear of a physical altercation.
7. The Landlord's agent testified that the Landlord received complaints regarding the Tenant walking around the residential complex, uttering threats and knocking on other tenants' doors. Submitted into evidence were audio recordings taken by another tenant and a summary of the audio recording that was emailed to the Landlord from that tenant. The audio recording and summary show the Tenant screaming, banging on things, yelling profanities, and saying that someone is a "marked man." The Tenant agreed that the event occurred. However, the Tenant states that he did not mean the words stated as he was intoxicated.

Serious Impairment of Safety

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.

It is not necessary that anyone has been hurt or injured. It is sufficient that it is foreseeable that the act or omission could have resulted in or may result in a serious impairment of safety.

10. The question to be answered is whether the Tenant's verbal threats, yelling and banging constitute a serious impairment of safety.
11. While the Tenant disputes he was going to harm another person, in consideration of the threat that another person is "marked", coupled with the yelling and banging, I find that it is reasonable to infer that the Tenant formed an intention to commit the threat and his words threatened the wellbeing or physical integrity of another tenant. The email summarizing the audio tapes also satisfies me that this other tenant was fearful that the Tenant was actually going to cause physical harm.
12. 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.

Relief from eviction

13. 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 grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.
14. The Landlord submitted that the tenancy cannot continue as the Tenant's behaviour has been consistent and ongoing. She stated that only after the Tenant received the notice of hearing did his behaviour change. The Tenant testified that if he was required not to engage in the conduct in the N7 Notice again he would be able to comply. He states that for the last two months, he has been quiet. Further, the Tenant states that if his tenancy was terminated, he would be on the street because the housing market is difficult, rentals are expensive, and he has bad credit.
15. In consideration of the foregoing, I find that the tenancy should continue provided the Tenant adhere to the conditions set out below. As eviction is a remedy of last resort, and the Tenant has demonstrated he has been able to correct the behaviour for the last few months, I am satisfied that relief should be granted.

It is ordered that:

1. The Landlord's application for eviction of the Tenant is denied on the condition that:
 - a. The Tenant shall not yell profanities, scream, bang on things or utter threats towards other tenants in the common areas of the residential complex commencing March 17, 2023 and for 12 months thereafter.

2. If the Tenant fails to comply with the conditions set out in paragraph 1 above, then, within 30 days of the breach, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (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 set out in paragraph 1 of this order.
3. The Tenant shall also pay to the Landlord \$186.00 representing costs to the Landlord for filing this application. If the Tenant does not pay the Landlord the full amount owing on or before March 22, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 23, 2023 at 5.00% annually on the balance outstanding.

March 17, 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.