



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

**Citation:** Toronto Community Housing Corporation v Clarke, 2023 ONLTB 24084

**Date:** 2023-03-14

**File Number:** LTB-L-066753-22

**In the matter of:** 1113, 61 PELHAM PARK GDNS  
TORONTO ON M6N1A8

**Between:** Toronto Community Housing Corporation Landlord

**And**

Cindy Lou Clarke Tenant

Toronto Community Housing Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Cindy Lou Clarke (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 February 28, 2023.

Only the Landlord's Legal Representative, Kamran Baradar-Bohari, attended the hearing.

D.C. Neal Murray and D.C. Wright attended as witnesses for the Landlord.

As of 1:27 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:**

Preliminary Issue

1. The member raised with the Landlord's Legal Representative that the Notice of Hearing package mailed to the Tenant was returned by Canada Post; it was marked 'moved'. If the Tenant had moved, was it necessary to go to hearing.
2. The Landlord's Legal Representative submitted that the Landlord was not aware that the Tenant had moved, and therefore needed to proceed with the hearing in the event the unit was not vacant. The Landlord is seeking a conditional order.
3. The matter proceeded on its merits.

Merits

4. For the reasons that follow, I find the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy
5. The Tenant was in possession of the rental unit on the date the application was filed.
6. The monthly rent is \$139.00.
7. There is no last month's rent deposit.
8. On October 28, 2022, the Landlord gave the Tenant an N6 and N7 notice of termination for illegal act and serious impairment of safety. The termination date on the notice was November 28, 2022. The notice was based on an incident September 29, 2022 alleging assault, assault with a weapon, and forcible confinement.
9. Detective Constable Neal Murray (D.C. Murray) of the Toronto Police Services testified on behalf of the Landlord to the following. He was the lead investigator on the incident the Tenant was involved in on September 29, 2022 at the residential complex. The Tenant was charged with assault, assault with a weapon, and forcible confinement; these charges are still before the court.
10. As set out in General Occurrence Report #2022-1899658 dated September 29, 2022, the Tenant is the accused in the report and the incident occurred at the Tenant's address. The victim attended the Tenant's unit to buy crack/cocaine from the Tenant. A dispute arose in the unit and the Tenant stabbed the victim's hand and barricaded her in the rental unit. Two other male parties knocked on the Tenant's door at which time the victim, as seen on the pictures taken from the video footage that recorded the incident, escaped the rental unit. The Tenant throws a knife at the victim as she's running out the door; the knife hits the victim's backpack and falls to the hall floor. The victim continues down the hall towards the elevators, the Tenant chases her. One of the unidentified males picks up the knife; the knife is never retrieved.

11. D.C. Murray was a neighbourhood officer prior to moving to his current division, therefore he is familiar with the complex/unit. He has had numerous previous interactions with the Tenant; she is a known drug user and has faced previous charges of assault and break and entries.
12. The Landlord's Legal Representative submitted that the test for illegal act and impaired safety have been met. The incidents took place in the residential complex, and such activities inherently affect the character of the residential complex as well as have the potential to impair the safety of all tenants. The Representative referred to *Metropolitan Toronto Housing Authority v. Owusu-Ansah* ([1995] O.J. No. 3864) where the Ontario Court of Justice said at paragraph 31 "There is an obligation upon the landlord to clean up its buildings of illegal conduct. There is an obligation on the landlord to see there is no illegal conduct carried on in its buildings...There is an obligation of the landlord to its other tenants". At paragraph 35 the court says, "In my view, the well-being of the community as a whole and the tenants in that community takes precedence over the individual's right to ask for relief of forfeiture under these circumstances".

#### Analysis

13. This application is based on sections 61 (the N6) and 63 (the N7) of the *Residential Tenancies Act, 2006* (the 'Act').
14. Section 61 of the Act states:
  - (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 20th day after the notice is given, in all other cases.
15. 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.

16. Section 66(1) of the Act says:

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

(c) The act or omission occurs in the residential complex.

17. Here, the illegal act and serious impairment of safety is with respect to an incident on September 29, 2022 that occurred in the residential complex whereby the Tenant was charged with assault, assault with a weapon, and forcible confinement. I find, based on D.C. Murray's uncontested testimony and evidence, the Tenant committed an illegal act and seriously impaired the safety of another during the aforementioned incident.

#### Relief from Eviction

18. 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. The Landlord is requesting a conditional order; I find that more than fair under the circumstances.

19. 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 continues if the Tenant meets the conditions set out below.
2. The Tenant, a guest or an occupant of the rental unit shall not seriously impair the safety of another individual at the residential complex with conduct similar to that alleged in the N7 notice of termination.
3. The Tenant, a guest or an occupant of the rental unit shall not commit an illegal act at the residential complex with conduct similar to that alleged in the N6 notice of termination.
4. The Tenant shall pay the Landlord the \$186.00 cost of filing the application on or before August 28, 2023.

5. If the Tenant fails to comply with the conditions set out in paragraph 2 and 3 of this order, 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. This application is made to the LTB without notice to the Tenant.
6. If the Tenant does not pay the Landlord the full amount owing from paragraph 4 on or before August 28, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 29, 2023, at 5.00% annually on the balance outstanding.

**March 14, 2023**

**Date Issued**

\_\_\_\_\_  
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.