



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

Citation: Toronto Community Housing Corp v Trota, 2023 ONLTB 13813

Date: 2023-02-08

File Number: LTB-L-071376-22
(TSL-24831-21)

In the matter of: 602, 200 Wellesley Street E
Toronto ON M4X1G3

Between: Toronto Community Housing Corp Landlord

And

Manuel Trota Tenant

Your file has been moved to the Landlord and Tenant Board's new case management system, the Tribunals Ontario Portal. Your new file number is LTB-L-071376-22.

Toronto Community Housing Corp (the 'Landlord') applied for an order to terminate the tenancy and evict Manuel Trota (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 involving the production of an illegal drug, the trafficking in an illegal drug or the possession of an illegal drug for the purposes of trafficking;
- 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 December 19, 2022.

The Landlord's Legal Representative J. Ratnakumaran and the Tenant attended the hearing as well as Landlord's witnesses Detective Constable Pickford and Kelly Fleming. The Tenant spoke with Tenant Duty Counsel prior to the hearing.

Determinations:

1. This application was filed on October 18, 2021. It was scheduled to be heard on November 16, 2021 and was adjourned as there was insufficient time to hear the matter. On February 15, 2022 the Landlord was not present at the hearing and the application was dismissed as abandoned. Upon the Landlord's Request for Review, it was found that the Landlord was not reasonably able to participate, and a new hearing was scheduled for August 25, 2022. The Tenant did not appear at the hearing and an eviction order was granted. The Tenant filed a Request for Review of the eviction order on the ground that he was not reasonably able to participate in the August 25, 2022 hearing. The Tenant's review was successful and the eviction order was stayed. A *de novo* hearing was held on December 19, 2022, with both parties in attendance.
2. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy in the application. However, having considered all of the circumstances, I find that the tenancy can continue if the Tenant satisfies the conditions set out below.
3. The Tenant was in possession of the rental unit on the date the application was filed.

Evidence

4. On August 26, 2021, the Landlord gave the Tenant an N6 notice of termination deemed served on August 31, 2021. The notice of termination contains the following allegations:

Illegal Drugs & Illegal Act

- The Tenant has committed an illegal act, trade, business or occupation involving the possession of an illegal drug for the purposes of trafficking in the rental unit or residential complex. The Landlord's position is that this act impaired the safety of Toronto Community Housing staff, other occupants of the unit, and other occupants of the residential complex due to the violent nature of the drug business.
 - The Tenant has committed an illegal act in the rental unit or residential complex by possession of a conducted energy weapon (a taser). The Landlord's position is that the possession of this weapon is extremely dangerous and impairs the safety of Toronto Community Housing staff, other occupants of the unit, and other occupants of the residential complex.
5. On August 26, 2021, the Landlord gave the Tenant an N7 notice of termination deemed served on August 31, 2021. The notice of termination contains the following allegations:

Serious Impairment of Safety

- The Tenant has seriously impaired the safety of Toronto Community Housing staff at the rental complex, other residents of the complex, and other occupants of the rental unit by possession of a weapon (taser), and possession of drugs as discussed above. This conduct occurred in the residential complex.

6. Detective Constable Pickford testified that she is a member of the Major Crime Unit with the Toronto Police Service. On July 2, 2021 a search warrant under the *Controlled Drugs and Substances Act* was executed at the Tenant's rental unit. She testified that she located fentanyl and crystal methamphetamine in her search of the kitchen in amounts greater than that for personal use. She was aware that other officers located more illegal drugs and a taser elsewhere in the rental unit. She testified that drugs of this type and quantity are a detriment to the building and community as they lead to social issues, unwanted visitors to the rental complex, minor crimes, safety concerns of potential violence, arguments over drug territory (which often lead to weapons possession), and theft of drugs and money.
7. Community Service Coordinator for Toronto Community Housing Kelly Fleming testified that the rental complex consists of 718 units with a mixed demographic. Some tenants are deemed to be "high needs," and participate in a violence reduction program which includes her services and those of a Special Constable on site. She testified that any drugs in the rental complex have a very negative effect on the entire complex, including overdoses, families requesting transfers due to feeling unsafe, and seniors in the complex feeling unsafe and fearful.
8. The Tenant acknowledges that there were drugs and a conducted energy weapon in the unit, but that he is 48 years old and has never been involved in a gang, nor is there an allegation or evidence to that effect. He testified that he was unable to discuss the circumstances of his arrest in detail because of the ongoing criminal proceedings. He is awaiting trial on the criminal charges in 2024.
9. The Tenant testified that while he was in jail from October 2021 until February 4, 2022 awaiting bail, he completed a drug program and received a referral to the Centre for Addiction and Mental Health. He is working with the John Howard Society to obtain employment.

Analysis

10. On the basis of the evidence provided by Detective Constable Pickford and the Tenant's own admission that the Tenant possessed illegal drugs in quantities greater than those for personal use in the rental unit on July 2, 2021 when the search warrant was executed, I find that the Tenant thereby committed an illegal act.
11. The Tenant did not deny that he was in possession of a conducted energy weapon in the rental unit, and I find that in so doing he committed an illegal act.
12. Detective Constable Pickford and Ms. Fleming both testified about the negative consequences and safety issues posed by possession and trafficking of illegal drugs in the rental complex and possession of a weapon, including unwanted persons in the rental complex, minor crime, theft of drugs and money, and violence associated with the drug trade. Possession of a restricted or prohibited weapon is an obvious safety risk. I find that the Tenant's conduct with respect to the drugs and the weapon seriously impaired the safety of staff, other residents, and other occupants of the rental unit.

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 Tenant has sole custody of his 11-year-old daughter who lived with him in the rental unit at the time of his arrest. He testified that he has been the only parent in her life from the time that she was 4 months old. When the Tenant was arrested, his daughter was placed in the care of the Children's Aid Society.
15. He testified that his daughter is a gifted student who has been affected by his actions and that he has arranged for counselling for her. He stated that she is the most important thing in his life and that since she was born in 2004, he has not been involved with drugs and is a recovering addict. He testified that he had become involved again in drugs due to depression, anxiety, and some physical conditions but has not used any drugs since October 2021 when he went to jail.
16. The Tenant's uncorroborated testimony was that the Children's Aid Society is willing to return custody of his daughter to him but will obviously not do so unless he has secure housing. He further testified that prior to securing a unit in the residential complex, he and his daughter lived in a shelter for two and half years.
17. If he were to lose his housing, he testified that he would lose his daughter and "would have to go back to jail" as he could not reside with his sureties and would not be able to find other affordable housing on his income. His current RGI monthly rent is \$295.00.
18. The Tenant testified that he has not been the subject of any complaints in the rental complex, even for noise, between his release from custody in February 2022 and the date of the hearing. This was confirmed by the Landlord's witness Kelly Fleming.
19. In support of the Landlord's position that the tenancy should be terminated, the Landlord's Legal Representative relied on prior Board decisions in which the Board has terminated tenancies due to drug activity. He also relied on *Connelly v. Mary Lambert Swale Non-Profit Homes*, 2007 CanLII 52787 (ON SCDC) (*Connelly*). In *Connelly*, the Divisional Court upheld the Board's decision to terminate the tenancy due to drug dealing. The appellant Tenant argued that the Board made an error in law when it found the appellant to be addicted to drugs without specifically analyzing the significance of that addiction under the *Ontario Human Rights Code* (although that issue had not been raised at the hearing).
20. The Court held in *Connelly* that there was no obligation on the respondent landlord to permit the tenant to operate a crack house in order to accommodate his disability, as that would be an undue hardship to the Landlord by substantially interfering with the rights of other tenants. The court specifically notes that the Appellant Tenant denied that he had been dealing drugs despite evidence to the contrary, or that his conduct created difficulties for the Landlord or other tenants.
21. The present case is distinguishable from *Connelly* in that the Tenant acknowledges the impact of his actions on his daughter and the Landlord and characterizes himself as a recovering addict who has not used drugs in more than a year. It is also established in law

that a drug addiction is a recognized disability under the *Ontario Human Rights Code*, and per *Connelly*, “that a tenant cannot be evicted for behaviour directly caused by a disability if an accommodation can be reached without undue hardship, in this case to the landlord and its tenants.”

22. Termination of a tenancy is a remedy of last resort; where the landlord’s interests can be protected and a tenancy preserved then the Board will customarily grant conditional relief from eviction if in all the circumstances it would not be unfair to do so.
23. It is uncontested that there have been no safety or other concerns with the Tenant in the rental complex in approximately 10 months between his return to the rental unit from custody in February 2022 and December 19, 2022, the date of the hearing.
24. The Tenant has testified that his goal is to do everything that is required to maintain his housing in order to regain custody of his daughter, and the length of time without any conduct whatsoever that is disruptive to the rental complex is positive.
25. It is apparent that the Tenant is fully aware of the legal consequences of a breach of his bail conditions and of a breach of the conditions imposed by this order.
26. In this case, a conditional order provides the opportunity to the Tenant to maintain his housing and thereby keep the possibility of his daughter’s return to his care if there is no further illegal conduct.
27. The Landlord’s interests in the protection of its staff and other tenants in the residential complex are protected by the section 78 clause in the order should the Tenant fail to comply with the conditions.
28. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

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It is ordered that:

1. The tenancy between the Landlord and Tenant continues if the Tenant complies with the conditions set out below.
2. The Tenant shall not possess any illegal drugs or weapons in the rental unit or rental complex.
3. If the Tenant fails to comply with the conditions set out in paragraph 2 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.
4. The Tenant shall 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 February 28, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 1, 2023 at 5.00% annually on the balance outstanding.

February 8, 2023
Date Issued

Margo den Haan
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.