



Order under Section 69
Residential Tenancies Act, 2006

File Number: LTB-L-053156-22

In the matter of: UPPER, 54 HUNTINGTON AVE SCARBOROUGH
ON M1K4L1

Between: Jeffrey Eric Cohen; Wins Lai Landlords
And
Alexander Bem Tenant

Jeffrey Eric Cohen and Wins Lai (the 'Landlords') applied for an order to terminate the tenancy and evict Alexander Bem (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;
- has seriously impaired the safety of any person and the act or omission occurred in the residential complex;
- has wilfully caused undue damage to the premises.

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

This application was heard by videoconference on December 15, 2022, beginning at 1:00 p.m..

Only the Landlords and the Landlords' Legal Representative Barrington Lue Sang attended the hearing.

As of 3:26 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 Landlords' evidence.

Determinations:

1. This application is about a tenant who is alleged to have (i) assaulted another person, (ii) threatened to burn down the residential complex and (iii) wilfully damaged the rental unit and the residential complex by causing several floods.
2. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy based on an N7 notice of termination.

3. The residential complex is a house with upper and lower level rental units. The Tenant took occupancy of the upper unit on August 7, 2021. He was in possession of the rental unit on the date the application was filed.
4. On September 8, 2022, the Landlord gave the Tenant an N7 notice of termination ('N7 Notice') under subsection 66(1) of the Residential Tenancies Act, 2006 (the 'Act'), alleging impairment of safety and wilful damage. On September 12, 2022, the Landlords served an N6 notice of termination ('N6 Notice') pursuant to section 61 of the Act, claiming that the Tenant had committed an illegal act based. The claims are set out below.

Assault of the Neighbour

5. In support of the N7 Notice, the Landlord J.E.C. submitted, and described, surveillance video footage of the exterior of the residential complex on May 23, 2022. At the 1-minute mark, the recording shows an individual walking towards a driveway, rolling a suitcase behind him. J.E.C. identified the individual as the neighbour residing next door at 52 Huntington Ave. The driveway is shared between the Landlords and the neighbour.
6. The neighbour enters the driveway and parks the suitcase on the right hand side of the driveway as viewed from the street. He walks towards the house but, before he arrives at the entrance, the Tenant enters the frame and hurriedly approaches him. In a loud voice, the Tenant asks the neighbour what he is doing on the Tenant's property. The Tenant aggressively pushes the neighbour back down to the sidewalk.
7. In the audio, the Tenant can be heard yelling about the neighbour trespassing and is seen animatedly waving his arms. The Tenant advances again on the neighbour until he is standing centimetres from the neighbour's face. The Tenant shouts at the neighbour to "get your shit out of here now!".
8. The Tenant immediately, and forcefully, pushes the neighbour into the centre of the street. The Tenant then grabs the suitcase and throws it metres down the sidewalk. The Tenant proceeds to stomp back up the driveway, disappearing from sight while yelling "Don't fuck with me again!". This warning is followed by indecipherable words which are delivered in a distinctly threatening tone. The neighbour cautiously watches the Tenant, then hesitantly picks up the suitcase and retreats down the sidewalk in the same direction he originally came from.
9. Based on the uncontested evidence, I am persuaded that on May 23, 2022 the Tenant committed illegal acts within the residential complex by assaulting and threatening the neighbour.
10. I also find that the Tenant risked seriously impairing the safety of the neighbour by his violent conduct.
21. The Divisional Court in *Furr v. Courtland Mews Cooperative Housing Inc.*, 2020 ONSC 1175 (CanLII) confirmed, at para. 17, that serious impairment of safety includes both actual impairment and a real risk of impairment. In this case, the Tenant's conduct carried with it the potential for an outcome that risked substantially jeopardizing the neighbour's physical safety. It was a foreseeable risk that propelling the neighbour onto the street could result in serious injury from a fall or from oncoming traffic.

The Floods and Electrical Fire

11. J.E.C. led evidence about the Tenant flooding his own unit on three occasions within a period of months. The water seepage damaged two of the other units in the building. The flooding, he stated, was caused by leaks in the Tenant's large aquarium which was in the Tenant's unit.
12. On one of those occasions, an electrical fire resulted from the flood, which had to be attended to by the fire department. One tenant had to be housed in a motel until repairs were completed to their unit. The Landlords introduced photographs of the damage caused by the flooding. It resulted in significant cost to them due to the extensive repairs needed.
13. The Landlords are not seeking an order for compensation for the damage. Their primary concern was that the flooding was the last straw for two sets of tenants who expressed their desire to move out because of the issue but also because of ongoing problems with the Tenant's unpredictable, violent conduct.
14. The details of the incidents of flooding were not entirely clear. No objective evidence was presented to establish that the Tenant wilfully caused the leaks and subsequent damage. Rather, the allegation is based on speculation. This claim cannot, therefore, succeed.

The Threat to Set Fire to the House and Illegal Entry to Another Rental Unit

15. The Landlords obtained signed declarations from two tenants, each dated August 30, 2022. These were submitted to the Board. Each declarant states in their respective document: "This letter confirms that Alexander Bern has uttered threats of burning down 54 Huntington Avenue."
16. The two identical statements are inadequate upon which to find that the Tenant threatened to set fire to the residential complex. No details or dates were presented to establish this claim. The declarants did not attend at the hearing to testify. The remaining content of the declarations speak more to complaints of substantial interference with reasonable enjoyment of the property.
17. The Landlords have not made a claim of substantial interference based on an N5 notice of termination. Such evidence may therefore be only relevant to my consideration of all of the circumstances under s.83 of the Act.
18. The Landlords allege that the Tenant broke into the vacant basement unit on October 22, 2022. Video footage submitted by the Landlords showing police attending at the unit was not very helpful. The video was undated. There is no doubt, as seen and heard in the video, that the Tenant is clearly creating a disturbance in the presence of police.
19. I am unable to find there was sufficient evidence presented to make a finding that the Tenant committed an illegal act on these facts. Material police reports were not provided and a series of text messages, also undated, lacked any necessary context or information that would assist in making a determination.
20. On that basis, I am not persuaded that the Tenant's conduct rose to a level that was more than substantial interference with the Landlord's or other tenants' reasonable enjoyment.

Request for an Expedited Eviction

22. Having made a determination that the Tenant breached sections 61 and 66 of the Act, I am obliged, further to section 84 of the Act, to request that the Sheriff expedite enforcement of the eviction

unless I determine that the eviction should be delayed based on a consideration of all the circumstances.

23. In this case, I find that the Landlords have demonstrated the grounds for an expedited eviction due to the seriousness of the Tenant's conduct. The Tenant's aggressive behaviour has and will, if it continues, affect the character of the premises. It creates fear in others. The Landlords wish to ensure that no one is affected by violence within the residential complex.

Request for Compensation

24. The Tenant was required to pay the Landlords \$5,893.97 in daily compensation for use and occupation of the rental unit for the period from October 6, 2022 to December 15, 2022.
25. Based on the monthly rent, the daily compensation is \$83.01. This amount is calculated as follows: \$2,525.00 x 12, divided by 365 days.
26. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
27. The Landlords collected a rent deposit of \$2,525.00 from the Tenant and this deposit is still being held by the Landlords. Interest on the rent deposit owing for the period from July 14, 2021 to the date of the order shall be credited by the Landlords to the Tenant and the amount owing by the Tenant in the order shall be adjusted accordingly.
28. In accordance with subsection 106(10) of the Act, the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

It is ordered that:

1. The tenancy between the Landlords and the Tenant is terminated. The Tenant must move out of the rental unit on or before February 10, 2023.
2. If the unit is not vacated on or before February 10, 2023, then starting February 11, 2023, the Landlords 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 requested to expedite the enforcement of this order and is directed to give vacant possession of the unit to the Landlords on or after February 11, 2023.
4. The Tenant shall pay to the Landlords \$3,368.97, which represents compensation for the use of the unit from October 6, 2022 to December 15, 2022, less the rent deposit and interest the Landlords owes on the rent deposit.
5. The Tenant shall also pay the Landlords compensation of \$83.01 per day for the use of the unit starting December 16, 2022 until the date the Tenant moves out of the unit.
6. The Tenant shall also pay to the Landlords \$186.00 for the cost of filing the application.
7. The total amount the Tenant owes the Landlords is \$3,554.97.

8. If the Tenant does not pay the Landlords the full amount owing on or before February 10, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 11, 2023 at 5.00% annually on the balance outstanding.

January 30, 2023

Date Issued

Elle Venhola

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 July 24, 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.