



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

Citation: GH CAPITAL CORPORATION v Farag, 2023 ONLTB 13734

Date: 2023-01-18

File Number: LTB-L-036625-22

In the matter of: 1409, 150 GRAYDON HALL DR
NORTH YORK ON M3A3B2

Between: GH CAPITAL CORPORATION Landlord

And

Nagy Farag Tenant

GH CAPITAL CORPORATION (the 'Landlord') applied for an order to terminate the tenancy and evict Nagy Farag (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 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 November 3, 2022.

Only the Landlord's Agent, Savanna Gold, and the Landlord's Legal Representative, Natasha Mizzi, attended the hearing.

Rupak Gautam appeared as a witness for the Landlord.

As of 9:55 a.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. For the reasons that follow, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The monthly rent is \$1,452.51.
4. The Landlord collected a rent deposit of \$1,452.51 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit is owing to the Tenant from October 9, 2001
5. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.
6. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
7. On June 6, 2022, the Landlord served the Tenant with a N5, N6 and N7 notice of termination for, substantial interference, illegal act, and series impaired safety, respectively. The termination date on the notices was July 4, 2022. The notices were based on dates and details set forth in the "Schedule A" attached to the notices.

Uncontested Evidence and Testimony

8. The Landlord entered into evidence a 64-page package of disclosure that included correspondence to and from the Landlord incident/occurrence reports, and audio and/or video files the Landlord's witnesses relied on in their testimony. This disclosure package was served to the Tenant in accordance with the Board's rules.
9. Rupak Gautum (RG), the complex project manager, testified to the following.
10. On November 4, 2020, the Tenant wrote a note and placed it on another tenant's vehicle, which was parked in their designated spot, advising the vehicle was going to be tagged and towed unless moved, and were later seen yelling in very close proximity to that tenant's face. The Tenant uses the parking space as his own and had the rightful tenant's car ticketed.
11. On December 8, 2020, RG attended the unit with a carpenter and building manager in response to an urgent maintenance request from the Tenant; the Tenant said there was no hot water and heat. When the Tenant was asked to remove furniture that was blocking the heaters and also to remove the air conditioner. The Tenant started yelling and swearing, accusatory about the air conditioner being removed; he demanded they leave and slammed the unit such that it almost hit the building manager's hand on the way out.
12. On May 27 and June 10, 2021, the Tenant posted email complaints to management in common areas around the complex. The emails were accusatory and derogatory in nature; the emails indicated they had been cc'd to all tenants, concerned parties and stakeholders.
13. On June 26, 2021, a staff member attended the Tenant's unit to address a flood from the refrigerator. The entire time the Tenant verbally abused and harassed the maintenance person and threatened that the property manager should watch out for his job.

14. On March 11, 2022, the Landlord responded to a lack of heat complaint. The entire time the Tenant was yelling and screaming and would not allow the staff member to take the unit temperature. The Tenant said it was fine now as it only drops at midnight and insisted someone come at that time with the manager. When the staff member was leaving, the Tenant slammed and kicked the door.
15. All the above behaviour is unacceptable and substantially interfered with reasonable enjoyment.
16. On July 14, 2021 the Tenant was seen throwing garbage from his balcony onto the front entrance of the complex. The issue kept happening over an approximate two-week period; the Landlord identified the continuing problem as from the Tenant because of discarded mail/envelopes with the Tenant's name and address. When approached about the problem the Tenant denied the allegations, saying they were false. After the Landlord sent a letter to the Tenant, the incidents lessened to about once every one to two weeks. A similar incident occurred on July 16, 2021, but the Tenant was throwing china plates with garbage from the balcony. The police were called but they did not attend until late that night therefore RG did not see or talk to them.
17. On December 18, 2021, when in the office, the Tenant was complaining about his FOB and angrily pushed it off the counter, The Tenant insisted on a refund because it was not working. The FOB was tested, and it worked fine, the Tenant was then advised that it only worked on this building, not all in the complex. The Tenant became very aggressive and insistent about getting a refund. As well as throwing the FOB, the Tenant threw papers from the counter to the floor.; the staff member felt threatened by the behaviour.
18. On or around July 16, 2021, the Tenant insisted on accessing the area of hallway that was blocked off by tape because a burst pipe was being repaired; the Tenant aggressively insists on access then just tears the tape down and walks through.
19. On March 16, 2022, when a staff member was attending the Tenant's unit about a lack of heat complaint, the Tenant became physically aggressive. When told not to touch him, the Tenant replied "F_ you!", "You're a F_ing liar". The Tenant continued yelling and slammed the door.
20. The above behaviour substantially interfered with reasonable enjoyment and seriously impaired the safety of others; throwing items from the 14th floor balcony is serious interference and could easily harm anyone walking in the area at the time and the Tenant's aggressive behaviour threatens the safety of others.
21. On the above-noted March 16, 2022 incident, RG attended the Tenant's unit with a staff member in response to another lack of heat complaint; a community worker also attended. The Tenant was yelling and screaming the entire time, and when advised that the unit temperature was registering as 22 degrees Celsius, he pushed both RG and the other employee. When RG told the Tenant not to touch him, the Tenant called him a liar and said nothing happened. When they left, the Tenant was still yelling and slammed the door. An incident report was completed and submitted to the office and an audio recording was taken of the incident. RG started recording visits due to the Tenant's aggressive and volatile behaviour. This incident substantially interfered with the Landlord's staff, as well as seriously impaired their safety and was an illegal act.

22. The Tenant should not be given any relief from eviction under section 83 of the Act because the aggressive and volatile behaviour continues, for example on August 8, 2022, when responding to a lack of hot water complaint, the Tenant yelled and screamed and accused the Landlord of shutting down the boiler.
23. RG testified that he and all staff members feel unsafe when they have to work in the Tenant's unit, one staff member has left the Landlord's employment.
24. Savanna Gold (SG), the accounts receivable manager testified to the flowing. She has dealt with the Tenant on numerous occasions, including taking part in a sit down with the Tenant about how staff member are uncomfortable with his behaviour. The Tenant phoned her a few days after receiving the letter about the meeting, searing and yelling, "F_ you" and "I'm not cooperating".
25. On December 9, 2021, the Tenant was sent a 'cease and desist' letter about throwing garbage of his balcony and putting others in danger. On June 10 and 30, 2022, the Tenant emailed the Landlord scathing remarks and allegations about what the Landlord was not doing; the emails were full of swearing.
26. SG testified that she is very uneasy with the Tenant's behaviour, his yelling, screaming and rude allegations against her and other staff. The Tenant will not listen or be reasonable; he basically denies everything. When the office phone rings, she and staff members are leery, afraid it might be the Tenant and thus be subject to his abuse; he is getting more and more aggressive. The Tenant has lived in the building since 2009, and this type of behaviour has persisted all along and is getting worse. The staff are substantially interfered with by the Tenant's behavoiur and feel threatened.

Analysis

27. This application is based on sections 64 (the N5), 61 (the N6), and 63 (the N7) of the *Residential Tenancies Act, 2006* (the 'Act').

N5 – Substantial Interference

28. Section 64 of the Act says:

(1) A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.

(3) The notice of termination under subsection (1) is void if the tenant, within seven days after receiving the notice, stops the conduct or activity or corrects the omission.

29. The Tenant did not correct the problem within the time-period set out in the Notice of Termination; the notice was served on June 6, 2022, therefore the Tenant had until June 13, 2022 to correct the behaviour as there was an incident on June 10, 2021.
30. Based on the uncontested testimony and evidence before me, I find that the Tenant has on the dates testified to in the N5 notice of termination, has substantially interfered with the reasonable enjoyment of others. The testimony and evidence establish that the Tenant engages in continual and regular aggressive and abusive behaviour towards others; staff are fearful of having to deal and or talk to the Tenant and will not respond to a maintenance request without another staff member present. On two occasions, the Tenant still laid hands on staff while yelling, screaming and swearing. The Tenant's behaviour is not acceptable, staff members should not be fearful of assisting or dealing with a tenant in their building.

N6 – Illegal Act

31. 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.

32. 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.

33. Here, the illegal act is with respect to two incidents involving the Tenant touching/pushing staff members; the incidents occurred in the Tenant's unit during maintenance calls. On

each occasion the Tenant was aggressive and abusive and had unwanted physical contact with the staff person(s). Black's law dictionary defines simple assault as "an assault that was not aggravated or provoked" and does not give rise to bodily harm. Assault is defined as an unlawful attempt of offer on the part of one person towards another, with force or violence, to inflict or threaten to inflict bodily harm. As such, the March 16, 2022 incident involving pushing RG constitutes assault.

N7 – Serious Impairment of Safety

34. 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
- (b) The act or omission occurs in the residential complex.

35. Here, the allegation of impaired safety is with respect to the Tenant throwing garbage and other items off of his 14th floor balcony. Based on the uncontested evidence and testimony before me, I find that the Tenant has thrown such items off of his balcony which on a balance of probabilities could harm any person walking in the vicinity. As such, the Tenant's actions seriously impair the safety of others; even a light object being thrown from the 14th floor can cause bodily harm.

Relief From Eviction

36. 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. I say this for the reasons that follow.

37. The Landlord's Legal Representative submitted that the Landlord fears for the safety of staff and other tenants. The Tenant's behaviour is escalating; the Tenant submits maintenance requests then engages in abusive behaviour and included on the incidents on the notices is where the Tenant punched 2 staff members in one day. The Tenant's acts are criminal as well as seriously impaired the safety of the Landlord and others in the residential complex; the circumstances do not warrant a conditional order. The Representative requested termination in 7 days and the application filing fee.

38. In *Swansea Village Co-operative Inc. v. Balcerzak*, [1998] O.J. No. 84, 63 O.R. (2d) 741 (Ont. Div. Ct.), the court found that there can be eviction for an isolated illegal act, but the illegal act cannot be trivial. It is necessary the offence has the potential to affect the

character of the premises or disturb the reasonable enjoyment of the Landlord or other tenants.

39. Therefore, the issue is whether the Tenant's actions, and taking into consideration all the surrounding circumstances, is eviction warranted. Here the surrounding circumstances are that the complex is a multi-residential building with numerous tenants who could be put at risk due to the Tenant's aggressive physical behaviour, including throwing items off his 14th floor balcony, and the Landlord and staff's fear when having to deal with the tenant, whether in-person or on the phone.

Expedited Enforcement

40. The Landlord's Legal Representative requested expedited enforcement of the eviction order.
41. Pursuant to section 84 of the Act, subject to the Board delaying the eviction date pursuant to section 83(1)(b), an order requesting the sheriff expedite the eviction order **shall** be issued when a tenancy is terminated for a serious impairment of safety.
42. As the Tenant chose not to be present to present any section 83 considerations, the sheriff shall be requested to expedite enforcement of the order. I accept the Landlord's submission that the staff are fearful whenever they have to communicate with the Tenant whether in person or on the phone. I further accept that the Tenant's behaviour has not improved and appears to be escalating which could affect not only staff but other tenants as well.
43. The Landlord's Legal Representative also requested that the termination date be expedited, 7-days as opposed to the standard 11-days. Although the Tenant's behaviour is unacceptable and warrants expedited enforcement, I find that the expedited enforcement sufficiently addresses the urgency of the situation.
44. 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 is terminated. The Tenant must move out of the rental unit on or before January 29, 2023.
2. If the unit is not vacated on or before January 29, 2023, then starting January 30, 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 January 30, 2023. **The Sherriff is requested to expedite the enforcement of this order.**

4. If the Tenant does not vacate the rental unit on or before January 29, 2023, the Tenant shall pay the Landlord compensation of \$47.75 per day for the use of the unit starting January 30, 2023, until the date the Landlord receives vacant possession of the rental unit.
5. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application on or before January 29, 2023.
6. If the Tenant does not pay the Landlord the full amount owing on or before January 29, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 30, 2023, at 5.00% annually on the balance outstanding.

January 18, 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.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on July 31, 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.