



## Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

**Citation:** Toronto Community Housing Corporation v Brown, 2022 ONLTB 13821

**Date:** 2022-12-07

**File Number:** LTB-L-030305-22-RV

**In the matter of:** 1104, 220 OAK ST  
TORONTO ON M5A2E1

**Between:** Toronto Community Housing Corporation Landlord

**And**

Noel Nestor Brown Tenant

### Review Order

Toronto Community Housing Corporation ('TCHC' or the 'Landlord') applied (L2 application) for an order to terminate the tenancy and evict Noel Nestor Brown ('NNB' or 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 (N6 notice of termination);
- 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 (N7 notice of termination).

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

This L2 application was resolved by order LTB-L-030305-22 issued on October 5, 2022 (the 'LTB Order').

On October 24, 2022, the Landlord requested a review of the LTB Order, claiming the Landlord was not reasonably able to participate in the proceedings.

On November 2, 2022, interim review order LTB-L-030305-22-RV-IN was issued (the 'Interim Order'), staying the LTB Order and sending the request to review to a hearing.

This request to review was heard in by videoconference on November 24, 2022.

Only the Landlord's Legal Representative, Jathusan Ratnakumaran ('LLR'), and the Landlord's Agent, Tiffany Lambert ('LLA'), attended the hearing. As of 9:55 am, the Tenant was not present or represented in the hearing room. LLR submitted that he sent a letter on November 10, 2022 to

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the Tenant, including the disclosure (possible evidence) and another copy of the notice of hearing. There was no record of any request for an adjournment by the Tenant. As a result, I proceeded to hear the request to review based on the Landlord's submissions only.

Possible witnesses for the Landlord were also present and ready to testify. They were special constable Aleem Khan, special constable Mohan Zoubor, Detective Cory Fourgere, and police constable Lisa Delude. Due to the uncontested nature of the proceeding, Detective Cory Fourgere ('WitCF') was the only one called forward to testify.

### Determinations:

1. LLR stated that when the LTB Order was received, the Landlord realized that something had not happened correctly. LLR stated the previous representative for this case file, Sarah Steenson, had carriage over the matter but left the employ of the Landlord in July 2022. Ms. Steenson did not transfer any files to the Landlord or LLR (who then was given carriage for this matter by the Landlord), so the Landlord was completely unaware of the hearing that had been scheduled by the LTB for September 22, 2022.
2. Had the Landlord been aware of the notice of hearing, LLR confirmed the Landlord had full intention of attending the proceedings for the underlying L2 application.
3. Based on the submission of the Landlord, both in the request to review and at this review hearing, I was satisfied that the Landlord was not reasonably able to attend the September 22, 2022 hearing, which resulted in the LTB Order being issued on October 5, 2022.
4. As a result, I find the Landlord's request to review is granted. The LTB Order is to be cancelled and the original L2 application (based on N6 and N7 notices) was directed to an immediate *de novo* (new) hearing before me.

### De Novo Merits Hearing for the L2 Application

5. On May 3, 2022, the Landlord served the Tenant with N6 and N7 notices of termination. The notices of termination both contained the same termination date of May 30, 2022. The N6 notice is based on subsection 62(2)(a) of the *Residential Tenancies Act, 2006* (the 'Act') and the N7 notice is based on subsection section 66.
6. Both notices of termination contained the same following allegations: on March 7, 2022, police authorities executed a search warrant in the rental unit and found illegal drugs and drug paraphernalia inside; they arrested the Tenant and charged him with possession for the purpose of trafficking and possession of crime proceeds. If successful with the L2 application, the Landlord seeks eviction on an expedited basis.
7. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the requested remedy for non-remedial, expedited termination is granted.
8. WitCF is a detective with Toronto Police Services and is a supervisor of the major crime division at 51 Division.

9. WitCF testified that on March 7, 2022, he was present onsite when the search warrant for the rental unit was executed. He stated the police had prior information that the Tenant might be involved in selling illegal drugs from the rental unit location.
10. When they entered the unit, WitCF explained that along with the Tenant, two other people were found inside (a male and female). These two other people were released as they were not found to have any illegal drugs on them.
11. WitCF testified that the rooms inside the rental unit were full of stolen property items. For example, during the search the authorities found 3 expensive pedal bikes, 7 high-end guitars (were part of a previous break & enter and the owner was returned this property), a series of trumpets, saxophones and amplifiers, and totes & suitcases full of originally sale-tagged stolen clothing (some 200 pieces).
12. WitCF also testified they found 28/29 grams of crack cocaine on a shelf in the Tenant's bedroom. He testified the cocaine was tested later and was verified to be crack cocaine which is an illegal drug under Schedule 1.
13. WitCF stated that personal use of crack cocaine usually involves ½ to 1 gram of the drug and this was not at all the case in the rental unit.
14. WitCF explained that with weighing scales also being found in the rental unit, combined with the high gram amount of cocaine found, the Tenant is most likely involved in the trafficking of the cocaine found. He stated that General Occurrence Report 22-431360 was generated (exhibit LL#1 -evidence) and the matter is still before the courts.
15. WitCF stated that whenever illegal drugs are present in any building, that presence in reality leads to altering the basic characteristics of the building – it creates high traffic of people coming and going, and it creates the real risk of violence happening – he said conflicts usually arise during ongoing exchanges of money and product.
16. LLA is the Landlord's supervisor of tenancy management. She described the rental unit building as being a 28 storey high-rise building comprising 470 units. Most of the units are bachelor or 1-bedroom units and the residents include many vulnerable people (such as seniors, recovering addicts and residents with mental health issues).
17. LLA confirmed that she was not present during the execution of the search warrant. However, LLA expressed grave concern with the other vulnerable residents of the building being negatively impacted by the Tenant's illegal activities. She also stated that there is a real risk of impairment to safety and it is only a matter of time that someone will get hurt, if this illegal activity is permitted to continue.
18. During final submissions, I asked LLR and LLA to disclose any circumstances they were aware of. They provided submissions on the character of the building being negatively affected by the Tenant's illegal actions, and they indicated they were not aware of any

other circumstances related to the Tenant, that may postpone or refuse termination of the tenancy. They confirmed the Landlord's request for an expedited eviction order.

19. Based on the uncontested submissions, I find that WitCF's and LLA's testimonies and led evidence were sufficient to persuade me on a balance of probabilities that the Tenant himself committed a serious, illegal act in the rental unit, as found to be the case on March 7, 2022 when police authorities searched the rental unit and found a large amount of crack cocaine there.
20. Cocaine is an illegal drug that is found listed in Schedule 1 of the federal *Controlled Drugs and Substances Act*. I was also persuaded that with 28/29 grams of cocaine being found in the rental unit, the Tenant is most likely in possession of an illegal drug for the purposes of trafficking.
21. Further, I find that the Tenant's illegal act, especially if that activity is permitted to continue, will have real potential to negatively impact the character of rental unit building, which is home to many residents who are vulnerable individuals.
22. I also refer to the following LTB guideline and court authority in support of my finding of an illegal act being committed:
  - Interpretation Guideline 9: Eviction for an Illegal Act or Business; and
  - *Samuel Property Management Ltd. v. Nicholson 2002 CanLII 45065 (ONCA) at paragraph 28, citing Swansea Village Cooperative v. Balcerzak , 1988 CanLII 4844 ( Ont. Div. Ct.)*
23. However, in respect of section 66 of the Act, I find that the testimonies and evidence submitted were not sufficient to persuade me on the claim of serious impairment of a person's safety. I accept the Landlord's argument that the risk of impairment to the safety of another person may increase quickly over time; however, at the time of this hearing (some 6 months after the L2 was filed), I was not shown anything to convince me that the threshold needed to be reached - that is, to make a positive finding – was reached.
24. 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.

**It is ordered that:**

1. The request to review order LTB-L-030305-22 issued on October 5, 2022 is granted.
2. Order LTB-L-030305-22 issued on October 5, 2022 is cancelled and replaced by the following order. The interim order issued on November 2, 2022 is also cancelled.
3. The tenancy between the Landlord and the Tenant is terminated.
4. The Tenant must move out of the rental unit on or before December 18, 2022.
5. If the unit is not vacated on or before December 18, 2022, then starting December 19, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

6. 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 December 19, 2022. The Sheriff is requested to expedite the enforcement of this order.
7. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the L2 application.
8. The total amount the Tenant owes the Landlord is \$186.00.
9. If the Tenant does not pay the Landlord the full amount owing on or before December 18, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 19, 2022 at 4.00% annually on the balance outstanding.

**December 7, 2022**  
**Date Issued**

Alex Brkic  
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.