



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

Citation: Ottawa Community Housing Corporation v Strackholder, 2022 ONLTB 12864

Date: 2022-11-28

File Number: LTB-L-036592-22

In the matter of: 308, 1465 CALDWELL AVE
OTTAWA ON K1Z8L9

Between: Ottawa Community Housing Corporation Landlord

And

Shawn Strackholder Tenant

Ottawa Community Housing Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Shawn Strackholder (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.

This application was heard by videoconference on November 1, 2022. The following individuals attended the hearing:

- Gabriel Cormier – Landlord’s legal representative
- Khalil Al-Qadi – Landlord’s agent
- Helen Choiniere – Landlord’s witness
- Mandy Fisher – Landlord’s witness
- Shawn Strackholder – The Tenant
- Sylvia Chapman – Tenant’s legal representative
- Joana Martey Asare – Tenant’s support worker

Determinations:

1. The Landlord’s application is based on an N6 and N7 notice of termination served to the Tenant on May 30, 2022 with termination dates of June 30, 2022. The N6 notice alleges that the Tenant has committed an illegal act within the residential complex and the N7 notice alleges that the Tenant has seriously impaired the safety of another person within the residential complex. Both notices allege the same conduct.

2. The residential complex is a high-rise apartment building. The Landlord owns and/or manages the entire residential complex
3. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy.

Landlord's evidence:

4. Khalil Al-Qadi appeared as agent for the Landlord. Mr. Al-Qadi is employed as a property manager for the Landlord. Mr. Al-Qadi testified that on May 4, 2022 at approximately 9:00am he encountered the Tenant outside the front entrance of the residential complex and that the Tenant asked him for a cigarette. Mr. Al-Quadi stated that when he advised the Tenant that he did not have any cigarettes in his possession, the Tenant proceeded to grab him by his shirt and threatened to kill him. Police were contacted shortly after the incident. The Landlord is unsure if any charges have been laid against the Tenant.
5. On cross-examination, the Landlord's agent stated that he is aware that the Tenant has previously been diagnosed with mental health concerns.
6. Helen Choinere provided oral testimony at the hearing and appeared as witness for the Landlord. M. Choinere is a prior resident of the residential complex, who frequently conducts volunteer work within the complex.
7. Ms. Choinere testified that on May 9, 2022 at approximately 10:30am, she was exiting the residential complex through the main-floor lobby with her service dog. Ms. Choinere stated that the Tenant was also in the main lobby, blocked her from exiting the residential complex and placed the sharp piece of Plexiglas against her neck. Police were contacted in response to this incident and the Tenant was transferred to the hospital for psychiatric assessment.
8. On cross-examination, Ms. Choinere agreed that the Tenant appeared to be an individual who suffers from a mental illness and requires assistance.
9. Mandy Fisher provided oral testimony at the hearing and appeared as the second witness for the Landlord. Ms. Fisher is employed as a tenant support worker for the Landlord.
10. Ms. Fisher testified that she is familiar with and has attempted to work with the Tenant in the past regarding his behavior. In particular, on April 6, 2022 Ms. Fisher attended the rental unit to speak with the Tenant and his mother regarding noise complaints being reported by neighbouring residents. During this interaction, the Tenant was verbally abusive towards Ms. Fisher and the Landlord's onsite security.
11. Ms. Fisher also testified that on May 4, 2022, she attempted to speak with the Tenant and his mother regarding the alleged assault and threats against the Landlord's property manager. Ms. Fisher stated that the Tenant refused to communicate with her and that his mother advised that he was not taking his prescribed medication and that he had refused assistance and/or services. Following this discussion, Ms. Fisher attempted to reach out to the Tenant's known support worker at the time but received no response.

12. On May 22, 2022, Ms. Fisher testified that she observed the Tenant smoking inside the common areas of the residential building. Ms. Fisher stated that the residential complex is a smoke-free facility.

Tenant's evidence:

13. The Tenant provided oral testimony at the hearing. The Tenant has resided in the rental unit for approximately 13 years. The Tenant testified that he was diagnosed with schizophrenia approximately 17 years ago and has since been on medication to control his disability.
14. The Tenant testified that during the month of May 2022, his mental health had deteriorated and that he was not in the right state of mind.
15. For the May 4, 2022 incident, the Tenant does not believe that he grabbed or threatened the Landlord's property manager. On cross-examination, the Tenant agreed that he could not entirely recall the incident.
16. For the May 9, 2022 incident, the Tenant agrees that he was walking in the residential complex with a sharp piece of Plexiglas, but disputes that he pointed or placed the object against Ms. Choinere's neck. On cross examination, the Tenant agreed that he could not entirely recall the incident but stated that if he did point a Plexiglas at the Landlord's witness, it was because he felt threatened due to his schizophrenia.
17. The Tenant does not dispute that he was smoking inside the residential complex on May 22, 2022 and also acknowledges that this is prohibited.
18. The Tenant testified that since May 25, 2022, he has not resided in the rental unit and is currently in the hospital working with his doctors and support worker to assist with his disability. The Tenant stated that he has since undergone a change in medication, which has improved his mental health.
19. As of the hearing date, the Tenant was unsure as to when he would be released from the hospital, but assured the Board that he plans to work with the Canadian Mental Health Association (CMHA) and other supports to ensure he maintains good behavior and continues with his prescribed medication.
20. The Tenant submitted into evidence two letters dated October 12, 2022 and October 25, 2022. Both letters are from the Tenant's psychiatrist and social worker and confirm that the Tenant has undergone a change of medication and that pending release a referral will be made for additional support.
21. On cross-examination, the Tenant agreed that as of the hearing date, no arraignments have been made with CMHA, nor did the Tenant have any documentary evidence to support that he would be monitored once released from the hospital.

Analysis:

22. Section 61(1) of the *Residential Tenancies Act, 2006* (the Act) states:

61 (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.

23. Based on the evidence before the Board I am satisfied on a balance of probabilities that the Tenant has committed an illegal act within the residential complex on May 4 & 9, 2022, by threatening and assaulting the Landlord's property manager and witness. Although the Tenant disputed the conduct alleged, he also confirmed in cross-examination that he could not recall what occurred on the alleged dates. As such, I prefer the evidence of the Landlord's witnesses who were credible and consistent with their testimony.

24. I am also satisfied that the Tenant has committed an illegal act within the residential complex by smoking inside the common areas of the residential building, which is contravention of section 12(2) of the *Smoke-Free Ontario Act, 2017*.

25. Section 66(1) of the Act states:

66 (1) 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.

26. Based on the evidence before the Board, I find on a balance of probabilities that the Tenant seriously impaired the safety of the Landlord's property manager on May 4, 2022 when he grabbed Mr. Al-Qadi by the shirt and threatened to kill him and on May 9, 2022 when he placed a sharp piece Plexiglas against Ms. Choinere's neck.

27. In *Furr v. Courtland Mews Cooperative Housing Inc., 2020 ONSC 1175* (CanLII) the Divisional Court confirmed that serious impairment of safety includes both actual impairment and a real risk of impairment. Although nobody was physically harmed on these dates, I find that the real risk of impairment was still present, especially during the May 9, 2022 incident, which could have resulted in serious injury or death to Ms. Choinere had the piece of Plexiglas cut her throat.

28. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Relief from eviction:

29. 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 postpone the eviction until January 31, 2023 pursuant to subsection 83(1)(b) of the Act.
30. The evidence is clear that the Tenant is a person with a disability as defined under section 10(1) of the *Human Rights Code, R.S.O. 1990, c. H.19* (the Code).
31. In *Walmer Developments v. Wolch, 2003 CanLII 42163* (ON SCDC), the Divisional Court provided guidance on how the Ontario Rental Housing Tribunals, the LTB's predecessor, should apply the Code when adjudicating landlord applications for eviction:

[35] . . . we are of the view that the ORHT is bound by the legislation to comply with s. 17 in full in its decision-making and in particular when exercising its discretion under s. 84 as to whether it would be unfair to the landlord not to evict a person suffering from a disability. The ORHT must consider whether any disruption in the enjoyment of other tenants may be sufficiently alleviated by a reasonable accommodation of the disabled tenant without undue hardship to the landlord.

32. The Divisional Court has subsequently clarified that a landlord's duty to accommodate in this context arises where a landlord is seeking to evict a tenant due to conduct that is directly caused by the tenant's disability. In *Connelly v. Mary Lambert Swale Non-Profit Homes, 2007 CanLII 52787* (ON SCDC), the Court stated:

[8] We agree with the appellant's submission 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.

33. I accept the evidence of the Landlord that prior to serving the N6 and N7 notices of termination, that Ms. Fisher reached out to the Tenant and his mother who confirmed that the Tenant was not taking his medication and had no supports in place to control his schizophrenia. In my view, the Landlord took reasonable steps to engage the Tenant and his mother prior to serving the notices of termination. Neither the Tenant nor his mother proposed a plan or requested accommodation from the Landlord in response to conduct that occurred prior to serving the notices.
34. In *Central Okanagan School District No. 23 v. Renaud [1992] 2 S.C.R. 970*, the Court held that the search for accommodation is a multi-party inquiry and that there is a duty on the person seeking accommodation to assist in finding appropriate accommodation. The Court stated that in determining whether the duty to accommodate has been met, it is necessary to consider the conduct of the person seeking accommodation.
35. In my view, the Landlord has taken reasonable steps to engage the Tenant and his parents in a discussion prior to initiating this eviction proceeding. The Tenant and his parents did not indicate any interest in proposing an alternative plan or suggesting alternative accommodations for the Tenant. As such, the Landlord was permitted to proceed with an application to terminate the tenancy for the alleged conduct.

36. In *Connelly V. Mary Lambert Swale Non-Profit Homes*, the Tribunal found that the tenant, who was addicted to drugs, operated a crack house in the rental unit. The Court upheld the Tribunal's determination that no accommodation is possible in the serious circumstances. The Court stated at paragraph twelve of its decision:
- “We reject any suggestion there is an obligation on the respondent to permit the tenant to operate a crack house in order to accommodate his disability. We conclude that such an attempt at an accommodation would cause undue hardship to the respondent by substantially interfering with the rights of other tenants.”
37. The conduct alleged on the notices of termination, in particular the assaults on May 4 and 9, 2022 are very serious in nature. I find that accommodating the Tenant for these actions would likely cause undue hardship to the Landlord and other tenants residing in the residential complex. As was found to be the case *Connelly V. Mary Lambert Swale Non-Profit Homes*, no accommodation is possible in these circumstances.
38. I find that given the seriousness of the conduct and the impact on the Landlord and their agents, who were assaulted by the Tenant, that it would be unfair to impose a conditional order in the hope that this conduct does not repeat.
39. In *Swansea Village Co-operative Inc. v. Balcerzak*, 1988 CanLII 4844 (ON SC), [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. The offence must have the potential to affect the character of the premises or disturb the reasonable enjoyment of the Landlord or other tenants. In this case, I find that the Tenant's conduct disturbed, interfered with the reasonable enjoyment and safety of the other individuals within the residential complex, including threatening to kill the Landlord's property manager and assaulting a volunteer worker with a sharp object.
40. Further, in *Joseph v. Toronto Community Housing Corporation*, 2013 ONSC 413. the Divisional Court confirmed that 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 serious circumstances.
41. Finally, I note that there was insufficient evidence before the Board to support the Tenant's submission that there will not be any future incidents. Although the Tenant entered into evidence two letters which speaks to a change in medication, neither the Doctor or the Tenant's support worker provided testimony or gave evidence that the Tenant would be closely monitored to ensure that the Tenant will continue to take the prescribed medication. I further note that the Tenant's own evidence confirms that as of the hearing date, the Tenant had not made any arrangements with CMHA or any 3rd party supports to ensure that the Tenant would be monitored once released from the hospital.
42. I am however mindful to the fact that the Tenant has been a long-term resident and that there have been no repeated incidents since the application was filed. As such I find it would not be unfair to delay termination to January 31, 2023 to allow the Tenant some additional time to secure alternate housing.

43. This Order contains all the reasons for this matter. No further reasons will issue.

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 31, 2023.
2. If the unit is not vacated on or before January 31, 2023, then starting February 1, 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 February 1, 2023.
4. The Tenant shall also 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 December 9, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 10, 2022 at 4.00% annually on the balance outstanding.

2022 ONLTB 12864 (CanLII)

November 28, 2022
Date Issued

Fabio Quattrociochi
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 August 1, 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.