



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

**Citation:** Windsor Essex Community Housing Corporation v Lemay, 2022 ONLTB 12745

**Date:** 2022-11-28

**File Number:** LTB-L-036682-22

**In the matter of:** 419, 2455 RIVARD AVE  
WINDSOR ON N8T3B3

**Between:** Windsor Essex Community Housing Corporation Landlord

**And**

David Lemay Tenant

Windsor Essex Community Housing Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict David Lemay (the 'Tenant') because:

- 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 2, 2022.

The Landlord's Legal Representative, Cameron Parrott, and the Landlord's Agent, Darlene Curran (DC), attended the hearing. Sarah Bishop (SB) and Leo Janisse (LJ) appeared as witnesses for the Landlord.

As of 10:11 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:**

- As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy is terminated on December 9, 2022.
- The Tenant was in possession of the rental unit on the date the application was filed.
- The residential complex is a nine storey adult building consisting of 376 rental units.

4. The Landlord's application is preceded by an N7 notice of termination ('N7 Notice') deemed served on May 18, 2022 in accordance with the *Residential Tenancies Act, 2006* (the 'Act'). The N7 Notice contains the allegation that on July 2, 2021 at 6:03 p.m., an occupant of the Tenant's rental unit was involved in a physical altercation with another resident of the residential complex. This altercation occurred at the front entrance of the building.

#### Landlord's evidence

##### *Testimony of DC – Landlord's Agent*

5. DC testified that she is employed by the Landlord as a district manager. Her role is to oversee the operation of the residential complex. She testified that a complaint was received by the management office with respect to a physical altercation that took place in the front entrance of the residential complex. She testified she was informed that the perpetrator of the assault was Jay Foley (JF), an occupant of the Tenant's unit.
6. The Landlord's Legal Representative submitted a video as evidence. The video shows JF entering the front entrance of the building. Without provocation, he pushes another resident to the ground and assaults him. JF can be seen repeatedly punching the other resident in the face and smashing his head onto the tile floor. The Tenant is not present in the video.
7. DC testified the Tenant has been warned on numerous occasions that JF is not permitted to be at the residential complex and despite JF being trespassed, the Tenant continually permits him into the residential complex and his rental unit. DC further testified that because the Landlord is a non-profit housing provider, unauthorized occupants are not permitted to reside in the rental units.
8. DC testified the Tenant is well aware that the actions of his guests and occupants are his responsibility however he persists in permitting JF into his unit. She testified that the other residents are afraid of JF and the safety of the other residents is paramount. She further testified that the Landlord could transfer the Tenant to another building however he cannot remain in his current unit.

##### *Testimony of LJ – Landlord's witness*

9. LJ testified that on July 2, 2021, JF assaulted him in the front entrance of the residential complex. He testified that he attempted to stop JF from entering the building but was overpowered and pushed to the ground. He testified JF punched him in the face and pushed his head onto the tile floor. He testified a bystander broke up the altercation and removed JF from the building. He further testified that although he suffered some injury, he did not contact the police as he is fearful of JF and did not want any further repercussions.
10. LJ testified that he moved out of the residential complex eight months ago and has transferred to another building. He testified that he appeared at the hearing as he has great concern for the other tenants as the Tenant is still permitting JF into the building.

*Testimony of SB – Landlord’s witness*

11. SB testified that she is employed by the Landlord as a property clerk. She testified that JF is known to her and that he lives in the Tenant’s unit. She testified she viewed the video evidence and identified JF as the perpetrator to the assault.
12. The Landlord’s Legal Representative submitted a document which listed the dates and times that JF had entered and exiting the Tenant’s unit as evidence. This activity list includes the period of May 10, 2022 to May 15, 2022 where it is documented that for this period, JF enters and exits the Tenant’s unit 35 times.
13. SB testified that she began tracking JF’s activity with respect to the Tenant’s unit to confirm he resides there. She testified that three or four other residents know JF and have allowed him into the building however after being advised that JF is not permitted in the building by way of a no trespass notice, they have ceased giving him access. She further testified that JF is known to the police as they have attended at the residential complex looking for him.

**Analysis**

14. 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.

15. The case law establishes that to warrant eviction under Section 66, there must be some actual impairment of safety. As held in *SOL-26261-12, 2012 LNONLTB 2628*, it is not necessary that anyone has actually been hurt or injured. It is sufficient that it is foreseeable that the act or omission could have resulted in or may result in a serious impairment of safety. The impairment of safety must be serious. Given the serious consequences of this ground, including short notice, immediate application, no opportunity to correct behaviour, priority eviction by the Sheriff, this ground is intended for the most serious of situations.
16. Based on the uncontested evidence before me, I am satisfied that someone the Tenant permitted in the residential complex has impaired the safety of another person. I say this because the Tenant knew or ought to have known that JF’s presence at the residential complex was not permitted. Despite being informed on numerous occasions that JF was under a no trespass order, the Tenant continually permitted him in the premise and is still doing so. I therefore find that the Tenant has seriously impaired the safety of another, and these acts occurred at the residential complex.

**Daily compensation**

17. The Tenant was required to pay the Landlord \$2,870.73 in daily compensation for use and occupation of the rental unit for the period from June 2, 2022 to November 2, 2022.
18. Based on the Monthly rent, the daily compensation is \$18.64. This amount is calculated as follows: \$567.00 x 12, divided by 365 days.
19. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
20. There is no last month's rent deposit.

**Section 83 considerations**

21. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
22. The Landlord's Legal Representative submitted the Landlord is seeking termination of the tenancy due to the Tenant's negligent behaviour and stated the safety of the other residents is paramount. The Landlords are seeking an 11-day eviction order.
23. When considering relief from eviction it is incumbent on the Board to consider all the circumstances. In this case the Tenant was not present to give me any of his circumstances to consider, therefore I am only able to consider what was presented to me at hearing all of which points to the Tenant being negligent and impairing the safety of others. I find it would be far more prejudicial to the Landlord to allow the Tenant any extra time in the unit due to his contemptuous conduct.

**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 December 9, 2022.
2. If the unit is not vacated on or before December 9, 2022, then starting December 10, 2022, 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 December 10, 2022.
4. The Tenant shall pay to the Landlord \$2,870.73, which represents compensation for the use of the unit from June 2, 2022 to November 2, 2022.
5. The Tenant shall also pay the Landlord compensation of \$18.64 per day for the use of the unit starting November 3, 2022 until the date the Tenant moves out of the unit.

6. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
7. The total amount the Tenant owes the Landlord is \$3,056.73. The Landlord must deduct any monies received from the Tenant from the amount owing above.
8. 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.

**November 28, 2022**  
**Date Issued**

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Susan Priest  
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 June 10, 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.