



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

Citation: Toronto Community Housing Corporation v Bohorquez, 2022 ONLTB 12739

Date: 2022-11-28

File Number: LTB-L-020052-22

In the matter of: 323, 341 BLOOR ST W
TORONTO ON M5S1W8

Between: Toronto Community Housing Corporation Landlord

And

Carla Bohorquez Tenant

Toronto Community Housing Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Carla Bohorquez (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.

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 14, 2022. The Landlord’s legal agent, T. Allen (TA), the Landlord’s legal representative, T. King, the Tenant, the Tenant’s support worker, I. Nkrumah (IN), and the Tenant’s legal representative, K. Lyons, attended the hearing. The Landlord’s witnesses, Constable Beaudry (CB) and Special Constable N. Jeyasingam (NJ), attended the hearing.

Preliminary Issue:

1. The Landlord’s application is based on an N6 Notice of Termination given to the Tenant on March 8, 2022 under section 61 of the *Residential Tenancies Act, 2006* (“Act”) and an N7 Notice of Termination under section 66 of the Act. Both of these notices are non-voidable and contain identical allegations, namely that the Tenant poured accelerant on the door of unit 422 and caused it to be ignited. The Tenant alleges that at the same time, the Landlord also served an N5 Notice of Termination under section 62, 64 or 67 of the Act which contains allegations identical to those on the N6 and N7 Notices of Termination. However, unlike the N6 and N7 Notices of Termination, the Tenant has a right to void the N5 Notice of Termination. While the Landlord served all three Notices on the Tenant, for the purpose of

2022 ONLTB 12739 (CanLI)

this application filed with the Board on April 7, 2022, the Landlord is relying solely upon the N6 and N7 Notices of Termination.

2. The Tenant submitted that the Board should dismiss the Landlord's application because the service of a voidable N5 Notice and a non-voidable N6/N7 Notice based on identical grounds gives rise to potential confusion and deprives the tenant of the statutory right to preserve the tenancy. The Tenant relied on Board Order HOL-09168-20, issued on January 14, 2022, for this proposition. In that decision, the Board found the N5 Notice and N7 Notice served on the Tenant were invalid as the service of a voidable and non-voidable notice was confusing and the Tenant was deprived of the statutory right to void the notice.
3. While I agree with some portions of Order HOL-09168-20, I do not find in these circumstances that the service of the three Notices of Termination causes confusion that results in them being invalid. I also find that the service of the Notices did not deprive the Tenant with any statutory rights to void the N5 Notice.
4. The Tenant referred to the Ontario Divisional Court decision in *Ball v. Metro Capital Property and Lockhurst*¹ for her position that a reasonable tenant would be confused as to whether they have an ability to void the notice or not. In *Ball*, the Court concluded that if a notice of termination issued by a landlord is confusing to the degree that a reasonable person could not understand the precise actions or omissions that caused the landlord to pursue eviction, a Member would find it defective. Specifically, the Court in *Ball* stated that "particulars should include dates and times of the alleged offensive conduct, together with a detailed description of the alleged conduct engaged in by the tenant."²
5. In the application before me, nothing about the Notices was confusing. The N6 and N7 Notices specified the date and time of the incident and described in detail the offensive conduct. In my view, the Landlord sufficiently described the allegation so that the Tenant knew what was being alleged. This means the Notices met the requirements of *Ball* and therefore, cannot be defective on this basis. I also do not find the Tenant could be confused as to what Notice the Landlord was proceeding on at the hearing as the Landlord's L2 application clearly denoted that they were proceeding with just the N6 and N7 Notices.
6. I also do not find the Tenant was deprived of a statutory right to void. The Tenant's position is that the Landlord elected to serve the Tenant with a notice of termination with which the Tenant had a statutory right to cure and preserve the tenancy and therefore, the landlord is obliged to permit the tenant to exercise that right. In my view, the service of a voidable N5 provides the Tenant with an option to void but there is nothing in the Act that prevents the landlord from contemporaneously serving any other applicable notices under different sections of the Act concerning the same conduct. Where the alleged conduct breaches multiple sections of the Act, a landlord should be permitted to serve the notices of termination required under the Act in order to seek eviction for each breach, as opposed to having seek eviction on the basis of the just a single alleged breach.

¹ [2002] O.J. No. 5931 (Ont. Div. Ct.) (*Ball*).

² *Ibid.* at para. 7.

Determinations:

7. 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. However, I find it would not be unfair to grant relief from eviction provided that the Tenant meet the conditions set out in the order.
8. The Tenant was in possession of the rental unit on the date the application was filed.
9. On March 8, 2022, the Landlord gave the Tenant an N6 and N7 Notice of Termination. The allegation in the Notices is identical. The allegation is as follows:
 - On February 27, 2022, the Tenant poured accelerant on the door of unit 422 and caused it to be ignited. After security attended to the fire, the Tenant was physically combative with security, was kicking and trying to bite them while attempted to calm her down.
10. NJ is a special constable for the Landlord. He testified that on February 27, 2022, he received a call that the fire alarm on the 4th floor had sounded. When he arrived, he was approached by the fire department who advised him the Tenant stated she started a fire. NJ then spoke with the Tenant who stated that the Landlord had not done anything about her noise complaints, so she decided to light the door on fire. NJ stated that he called the police. When he and another special constable tried to apprehend the Tenant, the Tenant became combative and kicked the other special constable. Submitted into evidence was a photograph, which showed black marks on the door and the ceiling.
11. CB is a detective constable. He testified that it was reported to him by investigating officers that the Tenant poured accelerant on the unit door and proceeded to ignite the door, causing a fire and substantial damage to the unit door. When the Tenant was asked what occurred, she stated that, "I know what happened, I set the fire." The Tenant was charged with "Arson endanger life" contrary to section 433(1) of the Criminal Code.
12. The Tenant did not contest the events. She stated that she only recalled bringing a lighter to the 4th floor and she was not of the right mind. She stated that when she realized what she was doing, she called the fire department. The Tenant stated that she was not combative with the special constables as she has medical issues.

N6 Notice of Termination**Illegal Act**

13. Subsection 61(1) of the *Residential Tenancies Act, 2006* (the 'Act') states that 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.

14. On a balance of probabilities, I find that the Tenant had lit the door of unit 422 on fire. While NJ and CB were not present for the incidents, the believable and credible evidence of NJ was that the Tenant advised him that she started the fire. The Tenant did not dispute that she started the fire and recalls bringing a lighter with her to the 4th floor. She also stated that, “when she realized what she was doing” she called the fire department. Therefore, I find that the Tenant has committed an illegal act in the residential complex by igniting a fire to the door of another rental unit.

N7 Notice of Termination

Serious Impairment of Safety

15. Pursuant to section 66 of the Act, a landlord may give a tenant a notice of termination if an act or omission of the tenant seriously impairs the safety of another person, provided that the act or omission complained of occurs in the residential complex.
16. In order to be successful on this ground, the Landlord must establish that the effect of the Tenant’s actions threatens the wellbeing or physical integrity of another person to such a degree that termination of the tenancy is reasonable in order to ensure the safety of others. In other words, the question to be answered is whether the tenant’s actions put someone at serious risk of physical harm. Not every risk of physical harm to another will meet the test, as the impairment of safety must be serious.
17. In my view, the Tenant’s conduct of February 27, 2022, in igniting a fire to another unit door, constitutes a serious impairment of safety to another person. While thankfully, no one was injured, the act of starting a fire inside a building, can cause substantial injury and even death. The Tenant’s conduct on this occasion was dangerous and reckless.
18. Based on the evidence before me, I am satisfied that the Tenant engaged in the conduct as detailed in the N7 Notice and, as such, has seriously impaired the safety of another person in the residential complex.

Relief from eviction

19. 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 grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.
20. The Tenant’s position was that the tenancy could continue. She has resided in the unit alone for 17 years. She is on CPP and ODSP and pays a rent-geared-to-income amount. Submitted into evidence were medical documents outlining the Tenant’s long list of physical and mental health issues.
21. The Tenant’s support worker, IN, testified that she checks in with the Tenant bi-weekly and the Tenant checks in with her case manager weekly. IN’s testimony was that the Tenant had enrolled and was continuing to enroll in several programs since the incident, such as psychotherapy, and was doing well. Therefore, it was unlikely the Tenant would engage in

this behaviour again. Also submitted into evidence was a letter from the Tenant's worker at Fred Victor which stated that it would be unlikely the Tenant would involve herself in another incident which would endanger her current tenancy.

22. IN also testified that if the tenancy was terminated, this would negatively impact her mental health and she would face homelessness. As a result, it would be more difficult to provide her with support.
23. The Tenant has never done anything of this sort before. She was asked what would happen if the noise continued, as she advised NJ that she ignited the fire due to the Landlord's failure to address the noise. She stated that if the noise continued, she would find another place to live.
24. The Landlord's position was that relief should not be granted. There is no guarantee that the Tenant would not engage in this behaviour again. The Tenant stated that she was in therapy before the incident and therefore, it is not guaranteed that the Tenant's involvement in the programs would prevent the Tenant from doing this again. Furthermore, in discussing the noise in the residential complex, the Tenant appeared agitated. As the reason stated for igniting the fire was excessive noise, this concerns the Landlord that she may reoffend.
25. On a balance of probabilities, I find that the prejudice in terminating the tenancy outweighs the prejudice to the Landlord in continuing the tenancy. The Tenant is a long-standing Tenant, and it was undisputed that she had never engaged in this behaviour before. While the incident was serious and could have had a very disturbing outcome, the evidence before me is that the Tenant has not engaged in this behaviour since and is unlikely to engage in this behaviour again. In my view, termination of the tenancy is a remedy of last resort, and she is likely to face homelessness if the tenancy was terminated. As such, the Tenant should be afforded another opportunity to preserve the tenancy, provided she meet the conditions set out in this order.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
2. Commencing the date of this order, and for the duration of the tenancy, the Tenant shall not start fires to the residential complex.
3. If the Tenant fails to comply with the conditions set out in paragraph 2 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.
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 3, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 4, 2022 at 3.00% annually on the balance outstanding.

November 28, 2022
Date Issued

Camille Tancioco
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.