



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

Citation: Toronto Community Housing Corp v Harkness, 2022 ONLTB 11635

Date: 2022-11-21

File Number: LTB-L-034311-22

In the matter of: 309, 6 Henry Street
Toronto Ontario M5T1X1

Between: Toronto Community Housing Corp Landlord

And

Brittany Harkness Tenant

Toronto Community Housing Corp (the 'Landlord') applied for an order to terminate the tenancy and evict Brittany Harkness (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.

This application was heard by videoconference on November 3, 2022. The Landlord’s legal representative Travis King and agent Tanishia Allen attended the hearing. Brenden Bell, Purvi Parmar, Nishandrian Jeyasingan and Daniel Godiho appeared as witnesses for the Landlord.

Colleen Jones appeared as a support worker for the Tenant. During the sign in process Ms. Jones advised that she was not representing the Tenant and was expecting the Tenant to log into the videoconference on their own device. As of 10:18am the Tenant was not present, despite being served with notice of hearing by the Board. There was no record of a request to adjourn the hearing. As such, the matter proceeded to be heard on an uncontested basis.

Determinations:

1. The Landlord’s application is based on an N5, N6 and N7 notice of termination. Each notice was served to the Tenant via mail on December 8, 2021 with termination dates of January 7, 2022 and contain the same allegations.
2. The residential complex consists of 152 rental units. The Landlord owns and/or manages the entire residential complex.

Landlord's evidence:

Testimony of Purvi Parmar:

3. Purvi Parmar provided oral testimony at the hearing and appeared as first witness for the Landlord. Ms. Parmar is employed as a special constable for the Landlord.
4. Ms. Parmar testified that on March 13, 2021 at approximately 9:16pm, she was dispatched to the rental unit regarding a domestic dispute occurring in the rental unit, in which an individual was threatening to "cut themselves". Ms. Parmar stated that the dispute involved the Tenant and one of her visitors. When Ms. Parmar arrived at the rental unit, the Tenant denied contacting the Landlord or 911 and that neither the Tenant nor their guest appeared to be harming themselves. The Landlord entered into evidence an occurrence report from the incident (LL exhibit #1).
5. Ms. Parmar testified that on April 23, 2021 at approximately 9:20pm, the Landlord's emergency line received a call from a resident residing on the third floor of the residential complex advising that a male individual known to be the Tenant's boyfriend was inside the residential complex. Ms. Parmar testified that two days prior, it was reported that the Tenant's boyfriend was involved in an armed robbery incident that occurred in the residential complex. Ms. Parmar could not confirm how this individual gained access to the residential complex or if the Tenant was present during the incident. The Landlord entered into evidence an incident report from the incident (LL exhibit #2).
6. On December 16, 2021 at approximately 1:45am, Ms. Parmar observed via the Landlord's video surveillance footage the Tenant and two male guests forcing entry into the front door of the residential complex. The Landlord entered into evidence an incident report from the incident (LL exhibit #3).
7. Ms. Parmar testified that on December 17, 2021 at approximately 7:33am, a resident on the third floor of the residential complex reported a male to be banging on the door of the rental unit. Ms. Parmar attended the rental unit and spoke with the Tenant. The Landlord entered into evidence an incident report from the incident (LL exhibit #4).

Testimony of Nishandrian Jeyasingan:

8. Nishandrian Jeyasingan provided oral testimony at the hearing and appeared as second witness for the Landlord. Mr. Jeyasingan is employed as a special constable for the Landlord. Mr. Jeyasingan testified that on April 21, 2021 he was dispatched to the 3rd floor of the residential complex to respond to a reported disturbance. Mr. Jeyasingan did not physically attend the residential complex as he was subsequently dispatched to attend a separate incident.

Testimony of Daniel Godinho:

9. Daniel Godinho provided oral testimony at the hearing and appeared as third witness for the Landlord. Mr. Godinho is employed as a special constable for the Landlord.

10. Mr. Godinho testified that on April 21, 2021 at approximately 9:23pm, he was dispatched to a disturbance on the third floor of the residential complex. Mr. Godinho attended the third floor of the residential complex and was advised by a resident of this floor that they were robbed by knife point. Mr. Godinho testified that the victim stated that the individual was associated with unit 309 and that the description provided matched the identity of the Tenant's boyfriend. Mr. Godinho was unable to confirm if the Tenant was present during the robbery incident or if the Tenant permitted the said individual access to the residential complex. The Landlord submitted into evidence an incident report from the incident (LL exhibit #5)
11. Mr. Godinho testified that on May 13, 2021 he was advised by onsite staff that the Tenant's boyfriend and frequent guest was prohibited from attending the residential complex as a result of bail conditions issued by the Criminal Courts. Mr. Godinho testified that on this same date, he was advised by another resident that the Tenant was seen outside the residential complex arguing with her boyfriend and that the Tenant's boyfriend was inside the building on the same date between the hours of 1:20am and 1:40am. Mr. Godinho confirmed that he did not personally witness the incidents plead nor did he witness the Tenant permitting her boyfriend entry to the residential complex.

Testimony of Brenden Bell:

12. Brenden Bell provide oral testimony at the hearing and appeared as fourth witness for the Landlord. Mr. Bell is employed as a special constable for the Landlord.
13. Mr. Bell testified that on July 15, 2021 he was dispatched to the third floor of the residential complex in response to a complaint regarding the rental unit. Mr. Bell attended the residential complex at approximately 8:25am and was advised by another resident that the Tenant was locked out of her unit and was banging on the front door. Mr. Bell also observed burn marks on the front door of the rental unit. Mr. Bell confirmed that he did not witness this incident, nor did the complainants witness who caused the burn marks on the front door of the rental unit.

Testimony of Tanisha Allen:

14. Tanisha Allen provide oral testimony at the hearing and appeared as agent for the Landlord. Ms. Allen is employed as a manager for the Landlord and oversees the actions of the residential complex.
15. Ms. Allen testified that since the Tenant moved into the rental unit on or about January 1, 2021, the Landlord has received numerous complaints from neighbouring residents regarding the conduct of the Tenant and her guests. Ms. Allen stated that she has also issued numerous warning letters and has had discussions with the Tenant regarding her conduct.

16. Ms. Allen testified that on December 17, 2021 at approximately 7:25am she received an email from a resident on the third floor of the residential complex advising that excessive noise consisting of banging was emanating from the Tenants rental unit. Ms. Allen also confirmed that the Landlord's emergency response unit was contacted regarding this incident.
17. Ms. Allen testified that since filing the L2 application, the Landlord has continued to receive ongoing complaints from neighbouring residents regarding the conduct of the Tenant and her visitors.

Analysis:

Illegal act:

18. 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.

19. The wording of section 61(1) of the Act is clear that when a guest or visitor commits an illegal act within the residential complex, that the Landlord must prove that the Tenant or the occupant permitted the said guest or visitor to commit the illegal act.
20. Based on the evidence before the Board, I am not satisfied on a balance of probabilities that the Tenant is in breach of section 61(1) of the Act.
21. The Landlord's uncontested evidence indicates that on April 21, 2021 the Tenant's then boyfriend, who is not a resident of the rental unit, was alleged to be involved in an armed robbery that occurred in the residential complex, however the Landlord provided insufficient evidence to support that the Tenant permitted this individual access to the residential complex on this date or that the Tenant was present during this incident. As such, I am unable to determine that the Tenant has permitted this individual to commit an illegal act within the residential complex on this date.
22. The Landlord's legal representative argued that the Tenant's boyfriend has bail conditions issued by the Courts ordering him not to attend the residential complex and that the Tenant has frequently allowed her boyfriend entry to the residential complex. The Landlord did not provide the Board with any documentary evidence to support these imposed conditions nor did any of the Landlord's witnesses confirm that they were directly advised by the Police or Courts of these conditions. As such, I find that the Landlord has failed to prove on a balance of probabilities that the Tenant's boyfriend is prohibited from attending the residential complex or that the Tenant is committing an illegal act by permitting her boyfriend entry to the residential complex.

Serious impairment of safety:

23. 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.

24. It is clear from the wording of section 66(1) of the Act that a Landlord may only serve a notice of termination under this section if the serious impairment was caused by the Tenant themselves, an occupant or someone permitted into the residential complex by the Tenant

25. Based on the evidence before the Board, I am not satisfied that the Tenant is in breach of section 66(1) of the Act. The Landlord provided insufficient evidence to support that the Tenant or someone that the Tenant has permitted into the residential complex has seriously impaired the safety of another person within the residential complex.

26. The Landlord's evidence alleges that on March 13, 2021, a special constable attended the rental unit in response to a domestic dispute. The Landlord's witness did not witness the occurrence and through her own testimony confirmed that upon arriving at the rental unit, neither the Tenant nor their guests appeared to be injured or in any harm.

27. As stated above, the Landlord also provided no evidence to support that the Tenant permitted access to the individual who committed an armed robbery on the April 21, 2021 incident.

Substantial interference:

28. Section 64 of the Act states:

- 64** (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.

(2) A notice of termination under subsection (1) shall,

- (a) provide a termination date not earlier than the 20th day after the notice is given;
- (b) set out the grounds for termination; and

(c) require the tenant, within seven days, to stop the conduct or activity or correct the omission set out in the notice.

(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. Based on the evidence before the Board, I am satisfied on a balance of probabilities that the Tenant has substantially interfered with the reasonable enjoyment of the Landlord and/or other residents within the residential complex.

30. The Landlord's uncontested evidence and witness testimony confirm that on March 13 and July 15, 2021 the Landlord received complaints from neighbouring residents regarding domestic disputes and/or noise disturbances from the rental unit, as plead on the N5 notice of termination.

31. I am also satisfied that the Tenant has failed to void the N5 notice by seizing the conduct plead within seven days of receiving the notice. As the N5 notice was served on December 8, 2021 via mail, the Tenant was deemed served with the N5 notice on December 13, 2021 pursuant to section 191(3) of the Act and such, the seven day voiding period was from December 14 – 20, 2021 pursuant to section 64(3) of the Act, in which the Tenant was required to cease and/or correct the conduct plead on the N5 notice.

32. I accept the Landlord's uncontested and credible evidence that on December 17, 2021 excessive noise consisting of banging on the front door and within the rental unit occurred and as such, interfered with the reasonable enjoyment of neighbouring residents.

Relief from eviction:

33. 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.

34. The Tenant was not present at the hearing to dispute the Landlord's allegations and further was not present propose an alternative to eviction or give evidence that the conduct would be corrected going forward. The Landlord's uncontested evidence also indicates that since filing the application, there have been repeated and ongoing incidents involving the similar conduct as plead on the N5 notice. As such, I will grant the Landlord's request for termination of tenancy.

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 2, 2022.

2. If the unit is not vacated on or before December 2, 2022, then starting December 3, 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 3, 2022.
4. The Tenant shall pay to the Landlord \$201.00 for the cost of filing the application.
5. The Tenant shall also pay the Landlord compensation of \$4.57 per day for the use of the unit starting December 1, 2022 until the date the Tenant moves out of the unit.
6. If the Tenant does not pay the Landlord the full amount owing on or before December 2, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 3, 2022 at 4.00% annually on the balance outstanding.

November 21, 2022
Date Issued

Fabio Quattrociocchi
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 2, 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.