



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

Citation: Ecuhome Corporation v Donaldson, 2022 ONLTB 11715

Date: 2022-11-16

File Number: LTB-L-055776-22

In the matter of: 301, 25 Hunter Street
Toronto Ontario M4J1C1

Between: Ecuhome Corporation Landlord

And

Gary Donaldson Tenant

Ecuhome Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Gary Donaldson (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, 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 Landlord's legal agents, G. Webster and S. Saleh (SS), the Tenant and the Tenant's support worker, D. Afolabi, attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. However, I find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N5 Notice of Termination

Substantial interference

3. On May 5, 2022, the Landlord gave the Tenant an N5 notice of termination (the 'N5 Notice') pursuant to subsection 64 of the *Residential Tenancies Act, 2006* (the 'Act').
4. The parties agree that the Tenant stopped the conduct or activity or corrected the omission within seven days after receiving the N5 notice of termination. Therefore, the Tenant voided the N5 notice of termination in accordance with s.64(3) of the Act.

N7 Notice of Termination

5. The Landlord also gave the Tenant an N7 notice of termination pursuant to section 66 of the Act. The notice of termination contains the following allegations:
 - On April 25, 2022, the Tenant punched another tenant in the face.
 - On April 26, 2022, the Tenant kicked another tenant's unit door and yelled at her to be quiet, making her feel unsafe.

Serious Impairment of Safety

6. The Landlord's agent, SS, stated that a female tenant reported to her that the Tenant kicked her door twice and called her names. This made the female tenant feel unsafe because she believed he was going to kick the door down as she previously witnessed him break a door. The Tenant conceded that he kicked her door. However, he accidentally kicked it when he stumbled while intoxicated. Nothing was said while he bumped into the door.
7. On a balance of probabilities, I find that the Tenant did not kick another tenant's door to intimidate her. I prefer the direct evidence of the Tenant over the Landlord's evidence. The Tenant's evidence was believable and credible that the incident was accidental. SS did not actually witness the incident and the female tenant did not attend the hearing to testify. In my view, the kicking of another tenant's door, without a real threat to impair safety, does not reach the level of serious as contemplated by section 66 of the Act.
8. SS testified that the complainant tenant left her a voicemail indicating that the Tenant punched him in the face. SS went to the property as soon as possible and arrived 1-2 hrs after the incident. She witnessed redness around his eye socket. The police were contacted immediately. Submitted into evidence was a denied request for access to the police report as the information could not be disseminated prior to the conclusion of the court case.
9. The Tenant testified that he did not punch the complainant tenant in the face. He and the complainant tenant had been friends for ten years. They were drinking and they got into an argument about cigarettes. The Tenant stated that the complainant tenant called the police and falsely reported that the Tenant hit him because he was angry. The Tenant stated that SS did not attend the complex until three days after the incident.
10. On a balance of probabilities, I find that the Tenant seriously impaired the safety of another person by hitting another tenant in the residential complex. SS's testimony was believable and credible that she attended the unit immediately after it was reported to her that the Tenant punched the complainant tenant in the face and saw the injury. I also do not find it likely that the complainant tenant only called the police because he was angry over cigarettes.

Relief from eviction

11. 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.

12. The Landlord submitted that the tenancy could not continue. After the service of the N5 and N7 Notice, the Tenant threatened to kill the complainant tenant while intoxicated although he was ordered not to contact him. Submitted into evidence was email correspondence from the complainant tenant. In addition, the female tenant reported that the Tenant had jumped through the window to get into the unit, and she was fearful for her safety. Further, an N5 Notice was previously served on the Tenant for conduct.
13. The Tenant stated he only swore and said mean things to the complainant tenant and did not threaten to kill him. The Tenant denied that he jumped through the window as he has a code to access the front door. He also testified that he suffers from numerous mental and physical health issues. However, he has since been medicated and if the tenancy continues, he will not engage in the behaviour again.
14. In consideration of the foregoing, I find that it would not be unfair to provide the Tenant another opportunity to preserve the tenancy. I do not have any direct testimony from the affected tenants to conclude that there is sufficient prejudice to terminate the tenancy. I also considered that the Tenant has numerous health issues and is confident his medication would assist in preventing this behaviour in the future.

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 November 16, 2022 and for a period of 12 months, the Tenant shall not physically assault anyone in 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 \$201.00 for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing on or before November 30, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 1, 2022 at 3.00% annually on the balance outstanding.

November 16, 2022

Date Issued

Camille Tancioco
, 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.