



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

**Citation:** Cityhousing Hamilton v Amatucci, 2022 ONLTB 11491

**Date:** 2022-11-16

**File Number:** LTB-L-013685-22

**In the matter of:** 103, 109 FIDDLER'S GREEN RD  
ANCASTER ON L9G1W4

**Between:** Cityhousing Hamilton Landlord

**And**

Domenico Amatucci Tenant

Cityhousing Hamilton (the 'Landlord') applied for an order to terminate the tenancy and evict Domenico Amatucci (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 Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on October 4, 2022. The Landlord's legal representative Katherine Howlett and agent Dave Chambers attended the hearing. The Tenant attended the hearing and was self represented. The Tenant spoke with Duty Counsel prior to the hearing.

**Determinations:**

1. The Landlord's application is based on an N6 notice of termination served to the Tenant on January 27, 2022 with a termination date of March 1, 2022. The N6 notice alleges that on January 13, 2022 the Tenant assaulted another resident within the residential complex.
2. The residential complex is a townhouse complex consisting of 45 rental units. The Landlord owns and/or manages the entire residential complex.

Adjournment request:

3. At the commencement of the hearing, the Tenant requested that the matter be adjourned. The Tenant stated that required additional time to prepare for the hearing and retain legal representation. The Landlord did not consent to the adjournment request.
4. Based on the submissions of the parties and in review of the Board's records, I denied the adjournment request and the matter proceeded to be heard on its merits.

5. The Tenant stated that he has been in discussion with legal aid since February 2022 and that they have declined to represent him at the hearing. The Tenant led no evidence to support that adjourning the matter would result in him obtaining legal representation or legal aid changing their original decision. The Board's records also show that the Tenant had uploaded several documents to the Tribunals Ontario Portal as early as August 24, 2022, which was over one month prior to the hearing. As such, I am satisfied that the Tenant has had ample notice of hearing, time to prepare his defence and an opportunity to retain legal representation.

Landlord's evidence:

6. Dave Chambers provided oral testimony at the hearing. Mr. Chambers is employed as a property manager for the Landlord.
7. Mr. Chambers testified that on or about January 13, 2022 he received an email from the Tenant advising of an altercation that occurred at his unit during the same morning. In the email, the Tenant admits to punching his neighbour. Mr. Chambers discussed the matter with the neighbouring tenant and Police who confirmed that the Tenant punched his neighbour and was subsequently charged with assault.
8. Mr. Chambers agreed that there have been no subsequent incidents of assault and that the Tenant and his neighbour have since made up and are friends. Mr. Chambers further stated that the neighbouring tenant advised the Landlord that he does not wish to see the tenant evicted. Mr. Chambers testified that the Landlord is concerned for the safety of all residents, including the victim of the incident who suffers from a brain injury.

Tenant's evidence:

9. The Tenant does not dispute the incident plead on the N6 notice, but argues that he was provoked and acting in self defense. The Tenant testified that he was not feeling well on the date of the incident as he had just received his 3<sup>rd</sup> covid vaccine. At approximately 5:00am, the Tenant was awoken from his sleep due to excessive noise emanating from the neighbouring unit. The Tenant stated that he banged on the wall of his unit in response to the noise and that shortly after, his neighbour proceeded to bang on his front entrance door. When the Tenant opened his door, his neighbour shoved and jabbed him with his fingers. The Tenant responded by punching his neighbour twice in the head causing him to fall to the ground.
10. The Tenant agrees that he was initially charged with assault, but stated that the charges have since been withdrawn in exchanged for entering into a peace bond. The Tenant stated that he regrets punching his neighbour and that since the incident, they have continued to be friends and frequently visit each other.

Analysis:

11. 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.

12. 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 January 13, 2022 by assaulting his neighbour. Although the Tenant argues that he was acting in self defense, I am not satisfied with this argument. The evidence is clear that although the Tenant's neighbour was being aggressive, the Tenants use of force was excessive. There was no reason why the Tenant chose to open his front door and engage the neighbouring resident in the hallway. Further, when the Tenant was pushed, he could have easily gone back into his rental unit and contacted the Landlord or the Police as opposed to punching his neighbour in the head. Although I do not condone the conduct of the neighbouring tenant, I do not find that this warrants the Tenants conduct and response to the situation.

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

**Relief from eviction:**

14. 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.
15. The Tenant is a senior, on ODSP and suffering from health concerns. The Tenant testified that eviction would render him homeless and have a great impact on his physical and mental health.
16. The parties agree that there have been no prior and/or subsequent incidents of similar nature. The evidence is also uncontested that the Tenant is remorseful for his actions, that he and neighbour are friends and hold no hostility towards each other. The Tenant assured the Board that this conduct would not repeat and that he has been in compliance with the peace bond issued by the Courts.
17. The Divisional Court has previously determined that evicting a tenant is a remedy of last resort: *Sutherland v. Lamontagne*, [2008] O.J. No. 5763 (Div. Ct.). In this case, I accept the Tenant's submissions that the conduct will not repeat going forward and as such, do not see the prejudice to the Landlord in imposing a conditional order.
18. 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 continues if the Tenant meets the conditions set out below.
  - a) The Tenant shall refrain from engaging in conduct similar to the actions plead on the Landlord's N6 notice of termination.
2. If the Tenant fails to comply with the conditions set out in paragraph 1 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.
3. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
4. If the Tenant does not pay the Landlord the full amount owing on or before November 27, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 28, 2022 at 4.00% annually on the balance outstanding.

**November 16, 2022**

**Date Issued**

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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.