



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

Citation: Toronto Community Housing Corporation v Weldu, 2022 ONLTB 11172

Date: 2022-11-08

File Number: LTB-L-005203-22

In the matter of: 813, 285 SHUTER ST
TORONTO ON M5A1W5

Between: Toronto Community Housing Corporation Landlord

And

Tekeste Weldu Tenant

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

This application was heard by videoconference on November 1, 2022. The Landlord's legal representatives Joy Xiao and Melissa Di Rubbo attended the hearing. AI Ally appeared as witness for the Landlord. As of 9:37am, the Tenant was not present, despite being served with notice of hearing by the Board.

Determinations:

1. The Landlord's application is based on an N6 notice of termination served to the Tenant on January 11, 2022 with a termination date of February 15, 2022. The N6 notice alleges that the Tenant and/or his guests have committed illegal acts within the residential complex.
2. The residential complex is a high-rise apartment building. The Landlord owns and/or manages the entire residential complex.

Landlord's evidence:

3. AI Ally provided oral testimony at the hearing and appeared as sole witness for the Landlord. Mr. Ally is employed by the Landlord as a special constable.
4. On July 27, 2020 at approximately 9:38pm, the Landlord's community safety unit received a call regarding a disturbance at the rental unit. Mr. Ally attended the rental unit with his partner and testified that the Tenant requested that his two guests be removed and escorted out from the rental unit. At approximately 9:51pm, the male guest of the Tenant was in the main lobby of the residential complex and proceeded to threaten to kill and

threw a rock at the Landlord's special constables. Mr. Ally confirmed that the Tenant was not present during this incident and was inside the rental unit.

5. On December 27, 2020 at approximately 11:48pm, special constables for the Landlord observed a male loitering on the 16th floor of the residential complex with an open container of liquor. After being approached by the special constables, the individual advised that he was looking for a place to sleep and entered the Tenants rental unit. Mr. Ally confirmed that he was not present during this incident, but relied on written incident reports from his colleagues.
6. On September 15, 2021, at approximately 12:43pm, special constables for the Landlord observed the Tenant drinking alcohol in an outdoor park located within the residential complex.

Analysis:

7. 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.

8. 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 of the rental unit permitted the said guest or visitor to commit the illegal act.
9. Based on the evidence before the Board, I am not satisfied that the Tenant permitted another person and/or guest to commit an illegal act within the residential complex on July 27, 2020 or December 27, 2020.
10. The evidence is clear that during both incidents, the Tenant was not present with the alleged guests when the illegal acts were being committed. As such, I find there is insufficient evidence to determine that the Tenant permitted these individuals to commit an illegal act within the residential complex on the alleged dates. I further note that on the July 27, 2020 incident, the Landlord's own evidence indicates that the Tenant requested that the Landlord's special constables remove the two visitors from his rental unit and the residential complex. I find that by asking the guests to leave the building and by asking the Landlord for assistance, that the Tenant was attempting to remove the visitors from the residential complex. This conduct indicates that the Tenant no longer wanted these visitors to be permitted in the residential complex and as such, were no longer his guests.
11. I am however satisfied that the Tenant has committed an illegal act within the residential complex by consuming alcohol in the common area and outdoor park of the residential complex on September 15, 2021, which is in contravention of section 41(1) of the *Liquor Licence and Control Act, 2019*. The Landlord's evidence was credible and uncontested.

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

Relief from eviction:

13. 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.
14. At the hearing, the Landlord's representatives stated that they were not seeking to terminate the tenancy, but rather a conditional order requiring the Tenant to correct the conduct. As the Tenant was not present at the hearing to consent to the terms proposed by the Landlord, I find it is appropriate to impose conditions solely for the actions and/or conduct that I have found to be in breach of the Act.

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 consuming alcohol in the common areas of the residential complex.
 - b) The Tenant shall not be in possession of an open container of alcohol within the common areas of the residential complex.
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 also pay to the Landlord \$186.00 for the cost of filing the application in accordance with the following schedule:
 - a) \$31.00 on or before the 1st day of each month commencing December 1, 2022 and continuing to May 1, 2022
4. Should the Tenant fail to make any of the payments mentioned in paragraph 3 in full or on time, the balance owing under paragraph 3 of this order shall become payable on the day following the date of default. The monies owing shall bear interest at the post-judgment interest rate determined under subsection 207(7) of the Act.

November 8, 2022

Date Issued

Fabio Quattrociochi
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.