



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

Citation: 341-343 St. Paul Street Holding Corp v Hubbs, 2022 ONLTB 10042

Date: 2022-11-02

File Number: LTB-L-030445-22

In the matter of: 6, 341 ST. PAUL ST
BURLINGTON ON L7R3K2

Between: 341-343 St. Paul Street Holding Corp Landlord

And

Terry Dale Hubbs Tenant

341-343 St. Paul Street Holding Corp (the 'Landlord') applied for an order to terminate the tenancy and evict Terry Dale Hubbs (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 6, 2022. The following individuals attended the hearing:

- Francisco Gomez – Landlord’s legal representative
- Tammy Murray – Landlord’s agent
- Tim McCaul – Landlord’s witness
- Terry Dale Hubbs – The Tenant
- Meghan Elick – Tenant support

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Having considered all the circumstances, the tenancy will terminate effective December 31, 2022.
2. The Landlord’s application is based on an N6 notice of termination served to the Tenant on May 31, 2022 with a termination date of June 22, 2022. The N6 notice alleges that the Tenant has committed an illegal act within the residential complex on May 24 and 26, 2022.

2022 ONLTB 10042 (CanLI)

3. The residential complex is a 3-storey apartment building. The Landlord owns and/or manages the entire residential complex.

Landlord's evidence:

4. Tim McCaul provided oral testimony at the hearing and appeared as the Landlord's sole witness. Mr. McCaul is employed as a superintendent for the Landlord.
5. Mr. McCaul testified that on May 24, 2022 he was inspecting the fire alarm in the boiler room of the residential complex with a fire inspection technician. During this inspection the Tenant entered the hallway of the residential complex and threatened to have his dog attack Mr. McCaul and the fire inspector.
6. On May 26, 2022 Mr. McCaul and the fire inspector were conducting maintenance work to the fire alarm located in the boiler room. Mr. McCaul testified that while working, the Tenant entered the boiler room, yelled, pushed and punched him twice in the head. Mr. McCaul further stated that approximately 10 minutes after being assaulted, he was attempting to enter his vehicle in the parking lot of the residential complex and that the Tenant rushed at him and slammed the drivers side door on his leg.
7. The Police were contacted regarding the incident on May 26, 2022 and the Tenant was subsequently charged for assault. The Landlord is unsure as to the status of the charges.

Tenant's evidence:

8. The Tenant provided oral testimony at the hearing. The Tenant disputes that he threatened the Landlord's staff on May 24, 2022 and that he was acting in self-defence on the May 26, 2022 incident. The Tenant agreed that he was charged with assault, but argues that he has yet to be convicted of the said charges and anticipates that they will be withdrawn.
9. The Tenant testified that the Landlord's superintendent is constantly interfering with his reasonable enjoyment of his rental unit. The Tenant stated that his rental unit is located next to the boiler room and that each time the Landlord conducts maintenance work in the boiler room, the Tenant is disturbed by the noise.
10. The Tenant testified that on May 26, 2022 he was awoken by the Landlord's staff working on the fire alarm in the boiler room. The Tenant stated that he was not provided with prior notice of this maintenance work and as such, exited his unit and told the Landlord's superintendent and contactor to leave.
11. The Tenant stated that he put his hand on Mr. McCaul's back to push him out of the boiler room and that the Mr. McCaul grabbed him by both of his wrists, the Tenant subsequently hit Mr. McCaul twice in the head. The Tenant also agrees to closing the car door on Mr. McCaul's leg but argues that this was because MR. McCaul was refusing to leave the residential complex and continuing to shout and yell.

Analysis:

12. Sections 61 and 75 of the *Residential Tenancies Act, 2006* (the Act) state:

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.

75 The Board may issue an order terminating a tenancy and evicting a tenant in an application under section 69 based on a notice of termination under section 61 whether or not the tenant or other person has been convicted of an offence relating to an illegal act, trade, business or occupation.

13. Based on the evidence before the Board, I am satisfied that the Tenant has committed an illegal act within the residential complex by assaulting the Landlord's superintendent on May 26, 2022.

14. I do not accept the Tenants position that he was acting in self-defence. The Tenants own testimony confirms that he first put his hands on the Landlord's superintendent and attempted to push him out of the boiler room before hitting him twice in the head. I also note that after the Landlord's superintendent left the boiler room, the Tenant followed him into the parking lot and slammed the car door on the superintendent's leg as he was entering his vehicle. In my view, the pattern of events suggests that the Tenant was the aggressive party during this incident and not someone who was simply trying to defend themselves. I find that had the Tenant truly been attempting to defend himself, he would not have followed the superintendent into the parking lot to continue the altercation.

15. Although the Tenant argued that the Landlord has been interfering with his reasonable enjoyment by not providing notice when conducting maintenance work, I find that this does not excuse the Tenants conduct. The Board provides tenants the right to file applications and commence their own proceedings for allegations of harassment and substantial interference with their reasonable enjoyment. The Tenant is not permitted to take matters into his own hands and use physical force to address his concerns with the Landlord.

16. Although the Tenant argued that he has yet to be convicted of the charges before the Court, section 75 of the Act is clear that whether or not a conviction has occurred is not a barrier to the Board making a finding that it is more likely than not that the offence alleged occurred for the purposes of an eviction application under the Act.

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

18. As of the hearing date, the Tenant has paid all rent owing to October 31, 2022. As such, the Landlord is entitled to per-diem compensation starting from November 1, 2022. As the rent is \$1,600.00 per month, the per-diem rate is \$52.60 per day.

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 postpone the eviction until December 31, 2022 pursuant to subsection 83(1)(b) of the Act.
20. The Tenant is on a fixed income and currently has joint custody of two young children. The parties agree that there have been no subsequent incidents since the notices of termination were served on the Tenant. As such, I find it would not be unfair to allow the Tenant some additional time to secure alternate housing.
21. I find that given the seriousness of the conduct and the impact on the Landlord, which had one of their employees assaulted that it would be unfair to impose a conditional order in the hope that this conduct does not repeat.
22. In *Swansea Village Co-operative Inc. v. Balcerzak*, 1988 CanLII 4844 (ON SC), [1998] O.J. No. 84, 63 O.R. (2d) 741 (Ont. Div. Ct.), the court found that there can be eviction for an isolated illegal act, but the illegal act cannot be trivial. The offence must have the potential to affect the character of the premises or disturb the reasonable enjoyment of the Landlord or other tenants. In this case, I find that the Tenants conduct disturbed, interfered with the reasonable enjoyment and safety of the Landlord and other residents within the residential complex.
23. Further, in *Joseph v. Toronto Community Housing Corporation*, 2013 ONSC 413. the Divisional Court confirmed that the well-being of the community as a whole and the tenants in that community takes precedence over the individual's right to ask for relief of forfeiture under these serious circumstances.
24. 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 is terminated. The Tenant must move out of the rental unit on or before December 31, 2022.
2. If the unit is not vacated on or before December 31, 2022, then starting January 1, 2023, 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 January 1, 2023.
4. The Tenant shall also pay the Landlord compensation of \$52.60 per day for the use of the unit starting November 1, 2022 until the date the Tenant moves out of the unit.
5. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.

6. If the Tenant does not pay the Landlord the full amount owing on or before December 31, 2022, the Tenant will start to owe interest. This will be simple interest calculated from January 1, 2023 at 4.00% annually on the balance outstanding.

November 2, 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.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on July 1, 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.