



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

Citation: 7838794 Canada Inc v Picard, 2022 ONLTB 9567

Date: 2022-11-02

File Number: LTB-L-029655-22

In the matter of: 2021, 2700 AQUITAINE AVE
MISSISSAUGA ON L5N3J6

Between: 7838794 Canada Inc Landlord

And

Gaetan Picard Tenant

7838794 Canada Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Gaetan Picard (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 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 September 21, 2022. The following individuals attended the hearing:

- Martin Zarnett – Landlord’s legal representative
- Linda Nuzzo – Landlord’s agent
- Tony Jannetta – Landlord’s witness
- Gary Gonzaga – Landlord’s witness
- Gaetan Picard – The Tenant

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. However, having considered all of the circumstances, I find that the tenancy can continue if the Tenant satisfies the condition set out below.
2. The Landlord’s application is based on an N6 and N7 notice of termination served to the Tenant on May 9, 2022 with termination dates of June 9, 2022. The N6 notice alleges that the Tenant has committed an illegal act within the residential complex. The N7 notice alleges that the Tenant has seriously impaired the safety of another person within the residential complex. Both notices contain the same alleged incident.

3. The rental unit is located in a multi-residential complex consisting of approximately 335 rental units.

Landlord's evidence:

4. Linda Nuzzo appeared as agent for the Landlord and provided oral testimony at the hearing. Ms. Nuzzo is employed as a Regional Manager for the Landlord and oversees the operations of this residential complex.
5. Ms. Nuzzo testified that the Tenant has moved into the rental unit on or about January 2010 and is the sole occupant of the rental unit. The Landlord submitted into evidence a copy of the lease agreement for the rental unit (LL exhibit #1).
6. Ms. Nuzzo testified that on or about April 28, 2022 she received a complaint from the Landlord's Superintendent and Project Manager stating that the Tenant had threatened to assault the Landlord's staff on this date. Ms. Nuzzo stated that she reviewed the Landlord's video CCTV surveillance footage and confirmed that the Tenant was involved in this incident and that his conduct was threatening towards the Landlord's staff.
7. Ms. Nuzzo testified that on May 16, 2022 she received an email from the Tenant advising that he had received the notices of termination and that the Tenant felt that he was provoked by the Landlord's Superintendent. The Landlord entered into evidence a copy of this email (LL exhibit #2). Ms. Nuzzo testified that she investigated the incident and found no wrongdoing on the part of the Landlord's staff.
8. Gary Gonzaga provided oral testimony at the hearing and appeared as a witness for the Landlord. Mr. Gonzaga is employed as a Superintendent for the Landlord.
9. Mr. Gonzaga testified that on April 28, 2022 at approximately 4:08pm, the Tenant had entered the main lobby and vestibule of the residential complex and began to shout and yell at him and the Landlord's Project Manager. Mr. Gonzaga stated that during this incident, the Tenant was repeatedly pointing, swearing and threatening to punch him in the head. Mr. Gonzaga disputes that he at any point threatened the Tenant, but rather, was prepared to defend himself as the Tenant was being overly aggressive towards him.
10. Tony Janetta provided oral testimony at the hearing and appeared as witness for the Landlord. Mr. Janetta is employed as a Project Manager for the Landlord.
11. Mr. Janetta testified that on April 28, 2022, the Tenant entered the main lobby and vestibule of the residential complex and was extremely upset with the Landlord's maintenance staff leaving his front entrance door unlocked. Mr. Janetta stated that he was present during this altercation and that the Tenant repeatedly threatened to punch Mr. Gonzaga. Mr. Janetta stated that during this altercation, children and other residents were afraid to enter the building due to the Tenants aggressive behavior.
12. The Landlord submitted into evidence video surveillance of the incident plead on the notices of termination (LL exhibit #3). The video recording contains no audio, however,

each of the Landlord's witnesses viewed and confirmed the Tenants presence in the video.

Tenant' evidence:

13. The Tenant provided oral testimony at the hearing. The Tenant does not dispute that he was present during the incident plead on the notices of termination but argues that he did not threaten the Landlords staff and that he was in fact assaulted by the Landlord's Superintendent.
14. The Tenant testified that on the date of the incident, he returned home at approximately 3:00pm and discovered that his front door was left unlocked. The Tenant stated that he was angry that the Landlord's staff had entered his unit and forgot to lock his front door and as such, confronted onsite staff regarding the incident.
15. The Tenant argues that he only became aggressive when the Landlord's Superintendent put his hand on his chest and as such, raised his voice and stated, "if I hit you, you won't get up".

Analysis:

16. Sections 61(1) and 66(1) 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.

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.

17. Based on the evidence before the Board, I am satisfied that the Tenant threatened to assault the Landlord's Superintendent and as such, has committed an illegal act within the residential complex
18. Although no audio was recorded in the video evidence submitted by the Landlord, I find that the submissions of the parties and the overall actions shown in the video prove on a balance of probabilities that the Tenant threatened the Landlord's onsite Superintendent. In the video footage, the Tenant can be seen to be visibly upset, aggressively pointing at the Landlord's staff, making a fist, and raising his hand towards the Landlord's

Superintendent. I further note that the Tenant admitted in his own testimony that he said to the Landlord's Superintendent "If I hit you, you won't get up".

19. Although the Tenant argued that the Landlord's Superintendent assaulted him first, which is what prompted the Tenant to get upset, I find that there is insufficient evidence to support this allegation. In the video footage, the Tenant is seen to be aggressive and angry with Landlord's Project Manager before the Superintendent even entered the front vestibule. I also find that in review of the video footage, there is no indication that Landlord's superintendent assaulted the Tenant.
20. Based on the evidence before the Board, I am also satisfied that the Tenant has seriously impaired the safety of the Landlord's Superintendent by threatening to punch him on the date alleged on the notices of termination. In *Furr v. Courtland Mews Cooperative Housing Inc., 2020 ONSC 1175* (CanLII) the Divisional Court confirmed that serious impairment of safety includes both actual impairment and a real risk of impairment. In this case, although nobody was physically harmed by the Tenants conduct, I find that the real risk of impairment was present during this incident, in which the Tenant had threatened to harm the Landlord's Superintendent.
21. Although I appreciate the concerns of the Tenant that the Landlords maintenance staff had entered his unit and failed to lock his front door, I do not find that this justifies the conduct that took place on the date plead on the N6 and N7 notice. The Tenant is free to file their own application to the Board if they feel that the Landlord has substantially interfered with their reasonable enjoyment. The Tenant is not permitted to take matters into his own hands and threaten or be verbally abusive towards the Landlords staff.

Relief from eviction

22. 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.
23. The Landlord requested that termination of tenancy be ordered due to the Tenants conduct, the impact on the onsite staff and the other residents within the community.
24. The Tenant agreed that his conduct was unacceptable and that he would not repeat the same actions going forward. The Tenant has resided in the rental unit for 12 years and the parties agreed that no similar conduct occurred prior to or after the incident plead on the notices of termination.
25. In consideration of all of the circumstances, including the Tenants long-term tenancy and that there has been only a single incident committed, I find that it would not be unfair to allow the Tenant to preserve his tenancy by complying with the following terms and/or conditions of this order.

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 abusive and/or aggressive behavior towards the Landlord's staff and/or other individuals within the residential complex.
 - b) The Tenant shall refrain from threatening the Landlord's staff and/or other individuals within 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 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 7, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 8, 2022 at 4.00% annually on the balance outstanding.

November 2, 2022
Date Issued

Fabio Quattrociocchi
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.