



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

Citation: Auburn Terraces Ltd. v McCrae, 2022 ONLTB 9538

Date: 2022-10-24

File Number: LTB-L-035091-22

In the matter of: 717, 239 AUBURN DR
WATERLOO, ONTARIO

Between: Auburn Terraces Ltd. Landlord

And

Ian Hubers-Hansma, Jonnah McCrae Tenant

Auburn Terraces Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Ian Hubers-Hansma, Jonnah McCrae (the 'Tenant') because 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. 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 12, 2022.

Daniela Marin attended for the Landlord, accompanied by legal representative Melissa Anjema. The Tenant Jonnah McCrae attended; the Tenant Ian Hubers-Hansma did not attend.

Barbara Kuehl appeared as a witness for the Landlord.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy in the application. However, having consideration for all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act') find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order.

N7 Notice of Termination

2. On June 8, 2022, the Landlord gave the Tenant an N7 notice of termination, with a termination date of June 18, 2022.
3. The notice of termination alleges that on May 30, 2022, the Tenant's dog attacked another tenant and her dog, causing serious injury.

Evidence of a Serious Impairment of Safety

4. On May 30, 2022 the Tenant Jonnah McCrae (JM) was with his dog and infant daughter near the entrance to the residential complex. The Tenant testified that he had the dog on a leash, but that he released the leash and commanded the dog to stay at his feet as he used both hands to secure his daughter in her car seat.
5. At that time, Barbara Kuehl (BK) exited the building with her dog. She testified that her dog is “reactive to intact male dogs” and, seeing the Tenant’s dog, barked at him. The Tenant’s dog responded by approaching BK’s dog aggressively. BK picked up her dog to try to protect him from attack, but JM’s dog grabbed the smaller dog from BK and began to toss him back and forth “like a ragdoll” while gripping him in his jaws. JM and another tenant were eventually able to separate the two dogs.
6. It was uncontested that JK’s dog is much larger than BK’s dog. Nor was it contested that it was BK’s dog who initiated the interaction between the two dogs.
7. BK and her dog were both injured. BK suffered a small piece of skin separated from her finger, which she testified was caused by the teeth of JM’s dog scraping her finger as he attempted to get his teeth into her dog. She had the wound attended to by her family doctor two days later. BK testified that due to a pre-existing condition, the wound took some time to heal. BK’s dog suffered more serious injury. He received several puncture wounds that required immediate medical attention. The veterinary bill for the dog’s injuries came to \$400, which the Tenant paid.
8. The Tenant had previously been warned by the Landlord to always keep his dog on a leash. The Tenant does not contest this but testified that the day’s events were unusual. He was attempting to navigate controlling the dog and getting his daughter into the car, a situation that was new to him. He let go of the leash while the dog sat at his feet, and he leaned into the car to secure the child. He commanded the dog to stay. He had never had a problem with his dog failing to respond to recall before. He said he thinks it was the new presence of the infant that made his dog particularly defensive and reactive to what he perceived as an aggressive approach from BK’s dog.
9. BK testified that she contacted the local humane society, and the Landlord entered into evidence an email exchange between BK and the authorities indicating they intended to designate the JM’s dog as dangerous. It was JM’s evidence that he successfully challenged this with the humane society and the designation did not go through. The Landlord offered no further evidence that the dog has been designated as dangerous.
10. BK testified more than once that the Tenant’s dog is “a sweet dog”. Both parties agreed that he is not generally a problematic dog in terms of temperament, nor has aggression been an issue other than this time. The Landlord, at my questioning, testified that there has been no further issue with the dog before or after this event and that the dog has not been off leash on the residential complex since the event.
11. The Landlord entered into evidence a video of JM walking with the dog, off leash, on public property. There is nothing in the video to indicate danger or aggression, and the place where the Tenant and his dog are walking in the video is not a part of the residential complex.

12. For all of the above, I find that BK suffered minor injury and her dog suffered more serious injury and that those injuries would not have occurred but for the fact that the Tenant JM's dog was off leash and not under his control when BK's dog barked at him.
13. The Tenant seriously impaired the safety of BK and her dog by failing to maintain his dog on a leash at all times, and this conduct occurred in the residential complex.

Relief from Eviction

14. I have considered all 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. In addition to the evidence above which to some degree mitigates the circumstances under which the Tenant's dog impaired the safety of BK and her dog, I have considered the Tenant's evidence that he is currently looking for another place to live but given his financial circumstances and the state of the rental housing market, a standard termination notice would leave him essentially homeless.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the following condition:
 - a) The Tenant's dog shall be leashed and muzzled at all times when the dog is outside of the Tenant's unit and in the residential complex. There shall be exception.
 - b) This condition shall remain in place for 24 months from the date of this order.
2. If the Tenant fails to comply with the condition set out above, 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 16, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 17, 2022 at 4% annually on the balance outstanding.

October 24, 2022
Date Issued

 Amber Neumann
 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.