



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

**Citation:** Dunham v Boyd, 2022 ONLTB 9687

**Date:** 2022-10-21

**File Number:** LTB-L-048000-22

**In the matter of:** 7, 76 ALBERT ST  
ST CATHARINES ON L2R2H1

**Between:** Derek Dunham Landlord

**And**

Harley Boyd, Robert Stockwell Tenant

Derek Dunham (the 'Landlord') applied for an order to terminate the tenancy and evict Harley Boyd, Robert Stockwell (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.

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 18, 2022.

Only the Landlord attended the hearing. The Landlord was represented by Judith Callender.

Also in attendance was the Landlord's witness, Detective Brandon Southcott (DBS).

As of 1:29pm, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. The Landlord's representative testified to serving the Thorold Detention Centre with disclosure and the notice of hearing on September 17, 2022 out of an abundance of caution. As a result, the hearing proceeded with only the Landlord's evidence.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities that the Tenants have seriously impaired the safety of another person at the residential complex and have committed an illegal act on the premises. Therefore, an order shall issue granting the Landlord's application and terminating the tenancy on October 26, 2022.

2. By way of background, this is a month-to-month tenancy in which rent is due on the first of the month in the amount of \$1,100.00.
3. The residential complex is a 7-unit apartment building. The rental unit is a two-bedroom unit; this tenancy began on September 28, 2020.
4. The Tenant was in possession of the rental unit on the date the application was filed and continued to be in possession as of the hearing date.

#### Termination of the Tenancy

5. On August 24, 2022, the Landlord gave the Tenant two notices of termination: the N6 and N7, with a termination date of September 16, 2022 pursuant to subsections 66(1) and 61(1) of the *Residential Tenancies Act, 2006*.
6. The Landlord's witness, DBS, who has been employed by Niagara Region Police Services since 2008, testified that on August 22, 2022, ambulance services were dispatched to the property and his platoon officers attended the premises. The Tenant RS was arrested and charged with aggravated assault due to an incident that took place at the rental unit whereby another male victim was injured. DBS clarified that the charge of aggravated assault is laid in circumstances when a victim is wounded or disfigured. DBS also clarified that there was sufficient evidence to suggest that the assault took place inside the rental unit.
7. The Landlord testified and presented photographs of the state of the rental unit that day. He recalls receiving a call from another tenant of the premises advising him that police were onsite and that there had been a stabbing in the building. The Landlord rushed to the residential premises to find trails of blood throughout the Tenant's unit. Photographs show blood on the door to the rental unit, trails of blood leading to the bedroom, hallway and out of the rental unit.
8. The Landlord testified that while he has not seen either of the Tenants at the rental unit since August 22, 2022, the unit has been accessed twice by individuals removing the Tenants belongings from the rental unit.
9. The Landlord testified that he has received many complaints from other residents about the high amount of traffic at the rental unit and the drug use that takes place and their concerns about the safety of the premises since the incident.
10. The Landlord seeks a termination of the tenancy.

#### ANALYSIS

11. Subsections 61(1) and 66(1) 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

12. In *Furr v. Courtland Mews Cooperative Housing Inc.*, 2020 ONSC 1175, the Courts find at paragraph 17:

[17] ...In 2276761 *Ontario Inc. v. Overall*, 2018 ONSC 3264, the Divisional Court made it clear that serious impairment of safety includes both actual impairment and a real risk of impairment. In other cases, the Board has held that it is not necessary that anyone has actually been hurt or injured and that a serious impairment of safety may include:

i) the potential for an outcome that has the risk of a substantial negative effect on a person's well-being;

ii) a foreseeable act or omission that could result in or may result in a serious impairment to safety; and

iii) extremely loud and intense arguments could easily result in violence and would be a safety hazard.

13. In the case before me, unfortunately, an actual injury was sustained by the male victim, whose safety was seriously impaired. Based on the uncontested evidence before the Board I find that the Tenant has seriously impaired the safety of another individual and committed an illegal act, namely by assaulting the male victim, and that this occurred on the residential premises. I say this based on the testimony and photographs presented.

Daily compensation, NSF charges, rent deposit

14. The Tenant was required to pay the Landlord \$1,157.26 in daily compensation for use and occupation of the rental unit for the period from to October 18, 2022.
15. Based on the Monthly rent, the daily compensation is \$36.16. This amount is calculated as follows: \$1,100.00 x 12, divided by 365 days.
16. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
17. The Landlord collected a rent deposit of \$1,100.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$132.58 is owing to the Tenant for the period from September 28, 2020 to October 18, 2022.
18. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
20. The Landlord is unaware of any circumstances that would justify relief from eviction.
21. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

**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 October 26, 2022.
2. If the unit is not vacated on or before October 26, 2022, then starting October 27, 2022, 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 October 27, 2022. The Sherriff is requested to expedite the enforcement of this order.
4. The Tenant shall pay to the Landlord \$110.68, which represents compensation for the use of the unit from September 17, 2022 to October 18, 2022, less the rent deposit and interest the Landlord owes on the rent deposit plus the Landlord's cost of filing the application.
5. The Tenant shall also pay the Landlord compensation of \$36.16 per day for the use of the unit starting October 19, 2022 until the date the Tenant moves out of the unit.
6. If the Tenant does not pay the Landlord the full amount owing on or before October 26, 2022, the Tenant will start to owe interest. This will be simple interest calculated from October 27, 2022 at 4.00% annually on the balance outstanding.

**October 21, 2022**  
**Date Issued**

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Sonia Anwar-Ali  
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 April 27, 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.