



Order under Section 77(4)
Tenant Protection Act, 1997

File Number:

In the matter of:

Between: Longo Properties Landlord
Limited and Tenant

Longo Properties Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Patricia Clarke (the 'Tenant') because she failed to meet the condition(s) specified in the Tribunal order TSL-27949 issued on March 30, 2001.

The Tenant filed a motion to set aside order TSL-35688, issued on November 15, 2001.

This motion was heard in Toronto on December 12, 2001. The Landlord and the Tenant attended the hearing. The landlord was represented by Mr. John Wiggins and the tenant was represented by Deanna Serra who was duty counsel on the day of the hearing.

History:

- 1 Longo Properties applied to have this tenant evicted after there were complaints about excessive noise from her unit. The hearing took place on March 22, 2001. The landlord attended but the tenant did not.
2. Despite the fact that the tenant did not attend the adjudicator, under section 84 of the Tenant Protection Act (Act) denied the eviction. Rather the adjudicator ordered that the tenant refrain from 'any unnecessary noise' in the unit. The adjudicator ordered that the landlord could apply under section 77 of the Act if the tenant breached this order.
3. On November 8, 2001 the landlord did apply for an order claiming that the tenant had breached the order. A default judgment was issued on November 15, 2001, terminating the tenancy and ordering that the tenant be evicted from unit as of November 26, 2001.
4. On November 23, 2001 the tenant moved to set aside that order. The set aside motion was scheduled to be heard on November 30, 2001 but was adjourned on that date to December 12, 2001.

5. On December 12, 2001 there was a hearing and at the hearing the tenant's counsel raised the issue of freedom from discrimination for disabilities as legislated by the Human Rights Code of Ontario. The tenant is a person suffering from a mental illness. Her mental illness causes her to have hallucinations, especially when she fails to take her medication. It was argued that her special needs must be accommodated by her landlord.
6. As neither party were ready to make this argument an interim order was made to allow parties to give the Tribunal written submissions on this point: *What is the appropriate application, if any, of the Human Rights Code of Ontario to the Tenant Protection Act in accommodating persons with a disease?*
7. The Tribunal received submissions on January 17, 2002, January 18, 2002, January 24, 2002, January 25, 2002 and January 28, 2002. These submissions were carefully prepared and the Tribunal wishes to acknowledge the work of the parties in preparation of the arguments.

Decision:

It is an undisputed fact that the screaming from this tenant's apartment is cries from the tenant. She screams because of her mental illness. When she is taking her medication she does not suffer from hallucinations and therefore she does not scream. She is currently under better supervision from a community health worker who is apparently monitoring her medication intake.

The Ontario Human Rights Code requires that we not discriminate against persons with a disability. The Code covers three areas of endeavour: employment, accommodation and services. The Code is a quasi-constitutional statute and overrides any other statute. This is acknowledged by section 2 of the Tenant Protection Act. The duty not to discriminate includes in it a duty to accommodate persons with a disability unless such accommodation is economically or in some other way not feasible. It is incumbent on the Tribunal to consider the Human Rights Code if it affects a tenant in their housing needs.

The decision of the Tribunal is based on an interpretation of the word 'unnecessary' and how noise making should apply to this situation. The tenant is required by the order of March 22, 2001 to refrain from 'unnecessary noise'. That would imply noise that the tenant has some control over. This tenant made noise resulting from her mental illness and had no control over it. It was not 'unnecessary noise' it was involuntary noise. The landlord has a policy, clearly supported by the Tenant Protection Act, that he will not tolerate noise made by tenants if it adversely affects other occupants. It is a neutral rule that affects this tenant adversely because of her disability. Other tenants will be evicted only if they willingly and knowingly make excessive noise this tenant will be evicted if she makes noise over which she has no control. This is known as indirect discrimination and as such is prohibited by the Ontario Human Rights Code.

If the above analysis is incorrect the Tribunal finds, in the alternative, irrespective of the Ontario Human Rights Code, that the noise made by the tenant is not 'unnecessary' and therefore it is not in violation of the agreement. If the tenant was making noise by playing her radio or TV at excessive volume or banging pots for example then she would be in violation of the order. However making noise that she cannot help making, that is involuntary noise, is not unnecessary noise.

It is ordered that:

1. Order TSL-35686, issued on November 15, 2001, is set aside.
2. The landlord's application is dismissed.

February 20, 2002

Date Issued

Elizabeth Beckett
Member, Ontario Rental Housing Tribunal

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If you have any questions about this order, call 1-888-332-3234.