

2006 WL 1086571 (Ont. Div. Ct.), 2006 CarswellOnt 2500

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Toronto Community Housing Corp. v. Norton

Toronto Community Housing Corporation, Landlord - Respondent and Peter Norton,  
Tenant - Appellant

Ontario Superior Court of Justice (Divisional Court)

Caputo J., E. Macdonald J., Swinton J.

Judgment: April 20, 2006

Docket: 82/05

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Counsel: Sheila Cuthbertson, for Appellant

Subject: Property

Landlord and tenant --- Residential tenancies -- Termination of tenancy -- By landlord for cause -- Illegal activity.

Cases considered:

Swansea Village Co-op v. Balcerzak (1988), 63 O.R. (2d) 741, 27 O.A.C. 297, 49 D.L.R. (4th) 141, 1988  
CarswellOnt 1079 (Ont. Div. Ct.) -- referred to

Statutes considered:

Tenant Protection Act, 1997, S.O. 1997, c. 24

s. 20 -- referred to

s. 62(1) -- considered

s. 196(1) -- referred to

**Per Curiam:**

1 This is an appeal from the order of the Ontario Rental Housing Tribunal dated January 28, 2005 which terminated the appellant's tenancy because he committed an illegal act.

2 The Tribunal found that the appellant committed an illegal act in the residential complex by being in possession of crack cocaine on November 20, 2004. At the time of the hearing, he had been criminally charged

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with possession, but there was no disposition of the charge.

3 Section 62(1) of the *Tenant Protection Act*, S.O. 1997, c. 24, provides that a landlord may give a tenant a notice of the termination of the tenancy if the tenant commits an illegal act or carries on an illegal trade, business or occupation in the residential complex. This Court has held that a tenancy may be terminated for an illegal act if the act has the potential to affect the character of the premises or to disturb the reasonable enjoyment of the landlord or other tenants (*Swansea Village Co-op v. Balcerzak* (1988), 63 O.R. (2d) 741 (Ont. Div. Ct.), at 745).

4 In applying this section, the Tribunal made reference to the evidence of a police officer, who testified about events following the charge -- in particular, the visits of 15 to 20 people to the building, many to the appellant's unit, each day. The Tribunal then said at p.3:

Certainly based on the testimony of the police officers, I find, activities in this building have seriously effected the character of the premises even considering that this tenant has not been charged with trafficking, but with possession.

5 An appeal lies to this Court on a question of law (s.196(1) of the *Act*), and the standard of review is correctness.

6 In our view, the Tribunal had sufficient evidence to find an illegal act, although we are advised the charge has since been withdrawn.

7 However, the Tribunal erred in law in applying s. 62(1). The member appears to have considered the activity at the rental unit to be a factor in his decision, without finding the appellant had engaged in trafficking. The only illegal act the member found was the one act of possession. He failed to address the issue whether one act of possession in the parking lot would affect the character of the premises or the reasonable enjoyment of other tenants or the landlord.

8 Therefore, this decision must be set aside. In the absence of evidence from the landlord that the one illegal act, while serious, had a deleterious effect on the rental complex, other tenants or the landlord, the appeal is allowed, and the order of the Tribunal is set aside. The application to terminate the tenancy is dismissed. No costs are sought.

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