

Order under Section 16.1 of the  
Statutory Powers Procedure Act  
and the Residential Tenancies Act, 2006

File Number: [REDACTED]

In the matter of: [REDACTED]

Between: [REDACTED]

and  
[REDACTED]

I hereby certify this is a true copy of the [REDACTED] Order  
[Signature] [REDACTED] Landlord  
(Signature of Staff Member) (Collecting Officer)

AUG 02 2016

LANDLORD AND TENANT BOARD Tenant

INTERIM ORDER

[REDACTED] (the 'Landlord') applied for an order to terminate the tenancy and evict the 'Tenant') because the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant, wilfully caused undue damage to the premises, and seriously impaired the safety of any person; and 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.

This application came before the Board in Toronto on May 6, 2016.

The Landlord and the Tenant attended the hearing. The Landlord was represented by Matt Anderson. The Tenant was represented by Karen Andrews. A minor occupant (the 'Minor') was represented by Samira Ahmed.

Determinations:

1. This application comes before the Board for a hearing of a preliminary motion brought by an unidentified minor occupant of the rental unit. The Minor argues that the Landlord's notices of termination as filed with the Board constitute a breach of s. 118(1) of the *Youth Criminal Justice Act* because they contain information in them that would identify the Minor as a young person who has been dealt with under that Act (the 'YCJA'). The Minor asserts that prior to filing the notices of termination with the Board the YCJA requires the Landlord to first seek an order from a youth court judge pursuant to s. 19(1)(s)(ii) permitting it to disclose such information to the Board.

2. With the consent of the parties I have exercised my discretion pursuant to Rule 24 of the Board's Rules of Practice. The hearing before the Board was conducted in a closed hearing room, and the Board's file and the audio recording of the hearing before me have been marked "Restricted Public Access".
3. The factual background to this motion is that the Tenant lives in the rental unit with two occupants, one of whom is the Minor. On January 19, 2016, the Landlord served on the Tenant notices of termination in the Board's prescribed N5, N6 and N7 forms. The forms correspond to the grounds for eviction set out in sections 61, 63, 64 and 66 of the *Residential Tenancies Act, 2006* (the 'Act').
4. The particulars attached to the notices of termination all contain the same allegation of fact. An occupant of the rental unit lit the lobby signs on fire, the police were called and the occupant was arrested. The person this notice refers to is the Minor.
5. Although these notices do not identify the Minor by name or give his age, I agree with the Minor and the Tenant that if the Board were to hear the parties' evidence with respect to the Landlord's application that would inevitably result in the identification of the Minor as a young person who has been dealt with under the YCJA.
6. This is expressly forbidden by subsection 118(1) of the YCJA which says:  
  

Except as authorized or required by this Act, no person shall be given access to a record kept under sections 114 to 116, and no information contained in it may be given to any person, where to do so would identify the young person to whom it relates as a young person dealt with under this Act.
7. As stated by the Court of Appeal in *S.L. v. N.B.*, 2005 CanLII 11391 (ON CA) at paragraph 45:  
  

Section 118 announces an unequivocal and unqualified prohibition against access to records kept by the court, police, or Crown except as required or authorized under the Act. This prohibition is made all the more emphatic by s. 138 which makes it an offence to violate s. 118.
8. The definition of "record" in s. 2(1) of the YCJA is incredibly broad:  
  

record includes any thing containing information, regardless of its physical form or characteristics, including microform, sound recording, videotape, machine-readable record, and any copy of any of those things, that is created or kept for the purposes of this Act or for the investigation of an offence that is or could be prosecuted under this Act.
9. Under the YCJA the Landlord has access to information in the record pursuant to s. 119(1)(d) because it is the victim of the alleged offence. This includes the Minor's name and the fact the Minor was arrested by the police. The problem is that even with a right of

access, s. 118(1) prohibits disclosure to the Board; the Board does not have a similar right of access.

10. The YCJA creates a mechanism that allows the Landlord to obtain the right to share what it knows about the Minor, the alleged offence and the Minor's police involvement with the Board. Subparagraph 118(1)(s)(ii) says:

Subject to subsections (4) to (6), from the date that a record is created until the end of the applicable period set out in subsection (2), the following persons, on request, shall be given access to a record kept under section 114, and may be given access to a record kept under sections 115 and 116:

(s) any person or member of a class of persons that a youth justice court judge considers has a valid interest in the record, to the extent directed by the judge, if the judge is satisfied that access to the record is

...

(ii) desirable in the interest of the proper administration of justice.

11. A similar issue as here arose before the Child and Family Services Review Board in *D.C. v. Youthdale Treatment Centres (CFSA s.124)*, 2008 CFSRB 100 (CanLII). In that case the panel refused to receive or consider information regarding police involvement with the child. At paragraph 8 the Board writes:

In proceedings external to the Youth Court, such as those before the civil courts and administrative tribunals, any party who wishes to rely on YCJA information must first obtain an order of the Youth Court. [See *S.L. v. N.B.*, 2005 CanLII 11391 (ON CA), [2005] O.J. No. 1411 (Ont.C.A.)]. The Youth Court has exclusive jurisdiction to determine whether or not the information should be released and to what extent. It is for the Youth Court and not the Panel to balance the interests protected under the YCJA, including the privacy interests of the young person and the interest in the administration of justice. In the event a party wishes to rely on information protected under the YCJA, they must first obtain an order of the Youth Court authorizing its release.

[Emphasis added.]

12. The Child and Family Services Review Board was in the position of being able to make a decision on the case before it without hearing evidence or receiving information about the child's involvement with police. So it was able to proceed to deal with the matter before it. That is not the case here. The only factual allegations on which the Landlord's notices are based involve the Minor's alleged criminal behaviour.

13. What this means is that if the Landlord wishes to raise factual allegations involving the Minor's alleged offences and police involvement in a proceeding before the Board it must seek an order from a youth justice court to permit the Board to receive that information.
14. This conclusion seems to fly in the face of s. 183 of the Act which requires the Board to hold expeditious proceedings, but it is in keeping with s. 15(2)(b) of the *Statutory Powers Procedure Act*. That provision bars the Board from receiving evidence that is inadmissible under the YCJA or any other statute.
15. It seems to me that the fair and prudent thing to do in these circumstances is not to dismiss the Landlord's application outright but to adjourn the proceeding to permit the Landlord an opportunity to obtain an order allowing it to disclose to the Board information identifying the Minor and his or her involvement with the police with respect to the lobby sign incident.
16. When the Landlord is ready to proceed it should file with the Board a copy of the youth court judge's order along with a request that the application be scheduled for a hearing.

**It is ordered that:**

1. The Landlord's application is adjourned *sine die*.
2. When the Landlord is ready to proceed it must file with the Board a copy of the youth court judge's order along with a request that its application be scheduled for a hearing.

**August 2, 2016**  
**Date Issued**

  
**Ruth Carey**  
Vice Chair, Landlord and Tenant Board

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If you have any questions about this order, call 416-845-8080 or toll free at 1-888-332-3234.