

Order under Section 69
Residential Tenancies Act, 2006

File Number: EAL-28438-12

RC (the 'Landlord') applied for an order to terminate the tenancy and evict AH and MJ (the 'Tenants') because they, another occupant of the rental unit or someone they permitted in the residential complex have wilfully or negligently caused undue damage to the premises. The Landlord has also applied for an order requiring the Tenants to compensate the Landlord for the damage; and because they, another occupant of the rental unit or someone they permitted in the residential complex have substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant. The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard in Kingston on January 8, 2013. The Landlord, and the Tenants, attended the hearing.

Determinations:

1. The Tenants provided written documentary evidence which clearly shows that they have been complaining about various things that require repair or replacement in the rental unit. The Landlord appears to be ignoring the Tenant's request for action. The landlord is attempting to sell the rental unit, and has informed the Tenants that she will not be doing any work in the rental unit before it is sold.
2. The Tenants complained to the Property Standards Division at the City Of Kingston. The City inspected the rental unit and issued, to the Landlord, a work order. In complying with the work order, the Landlord has decided that all of these damages were caused by the Tenants. The landlord provided no evidence that would reasonably connect the damages to the Tenants having caused them.
3. The Tenants have been residing in this rental unit since 2005, and claim that they have been requesting repairs since the day they moved into the rental unit. I am not satisfied that the Landlord has any basis on which to blame the Tenants for damages in the rental unit, with the exception of discoloration of the walls due to excessive cigarette smoke. This conduct has substantially interfered with the Landlord's and the other tenants' reasonable enjoyment of the residential complex.
4. With respect to the claim by the Landlord that the Tenants have caused serious interference with the privileges or interests of the Landlord, I do find that the Tenants have been interfering with the Landlord's ability to properly show the unit. The tenants interfere on an ongoing basis by interrupting the viewing process by relating tales of woe to the prospective buyers about the state of the unit and the non-action by the Landlord in repairing and replacing things. This conduct substantially interferes with a lawful right, privilege or interest of the Landlord or another tenant.

5. It appears that the Landlord is attempting to evict the Tenants to make it somewhat easier to sell the property. I see no evidence which would convince me that the Tenants have wilfully or negligently damaged the rental unit. The damages as outlined by the Property Standards inspector are totally the responsibility of the Landlord and /or fall into the category of normal wear and tear.
6. The Landlord collected a rent deposit of \$810.00 from the Tenants and this deposit is still being held by the Landlord.
7. Interest on the rent deposit is owing to the Tenants for the period from March 16, 2005 to December 13, 2012
8. 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 not be unfair to grant relief from eviction subject to the condition(s) set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

It is ordered that:

1. The Tenants shall refrain from interfering, in any way, with the Landlord's or the Landlord's agent showing the rental unit in order to sell it. The Tenants shall also wash and clean the walls and ceilings of the rental unit, of the discolouration and grease on the walls due to excessive smoking, and prepare them for painting by the Landlord.
2. The remainder of the Landlord's application is dismissed.

January 18, 2013
Date Issued

Wayne MacKinnon
Member, Landlord and Tenant Board

Eastern-RO
255 Albert Street, 4th Floor
Ottawa Ontario K1P6A9

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.