

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

**File Number:** EAL-42430-14

KR (the 'Landlord') applied for an order to terminate the tenancy and evict LM and RC (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 in a residential complex that has three or fewer residential units.

This application was heard in Kingston on September 9, 2014. The Landlord and the Tenants attended the hearing. The Tenants were assisted by Duty Counsel, JH.

Although the Landlord has included (RC) as a Tenant in her application she does not consider him a tenant because she has not signed a tenancy agreement with him. I will therefore refer to (RC) as Occupant in the body of this order.

Preliminary matter:

Duty Counsel argued that the *10 day Notice to Terminate a Tenancy Early* (Form N-7) issued to the Tenant on August 6, 2014, is defective because it does not have the level of detail (dates and times of incidents) for the Tenant to address, defend, or dispute the Landlord's allegations. He further argued that the Landlord's application should therefore be dismissed.

**Determinations and reasons:**

Preliminary matter

1. It was established in the case of *Ball v. Metro Capital Property, Toronto Docket No. 48 / 02 (Divisional Court)* that a *Notice to Terminate a Tenancy Early* must contain a level of detail about the nature of the alleged offence(s) along with date(s) and time(s) that the alleged offence(s) took place so that the Tenant is able to address, defend, or dispute the Landlord's allegations.
2. The *10 day Notice to Terminate a Tenancy Early* (Form N-7) mostly makes reference to how the Tenant's and the Tenant's roommate's smoking have caused the Landlord to lose two sets of tenants in unit # 3 in the past three and a half years, and is putting at risk the Landlord's winter sublet tenant. The Notice also makes mention of keeping the front porch clear of excessive junk garbage, repairing the front screen damaged by one of the Tenant's dogs, and the increased heat and furnace filter costs the Landlord is incurring.

3. The (Form N-7) Notice does not provide a sufficient level of detail in terms of times and dates with respect to the front porch containing excessive junk and garbage, or the necessary level of detail to explain the increased heat and furnace filter costs the Landlord is incurring.
4. The (Form N-7) Notice refers to the Tenant moving a heavy smoker into the unit without consulting the Landlord or getting her permission. The *Residential Tenancies Act, 2006* (the 'Act') does not require that a Tenant get the Landlord's permission to bring in a roommate (Occupant) into the rental unit to help pay the rent.
5. The only part of the (Form N-7) Notice that I find to be valid is the part of the notice related to the smoking by the Tenant and the occupant and the damage to the screen door. This part of the Notice is sufficiently clear for the Tenant to be able to address, defend or dispute the Landlord's allegations.

L-2 application

6. The question then becomes whether or not the smoking by the Tenant and the Occupant and the damage done to the door screen by the Tenant's dog has substantially interfered with the Landlord's lawful rights, privileges or interests or the Landlord's reasonable enjoyment of the residential complex.
7. The (Form N-7) Notice makes no reference to the effect of the Tenant's smoking on the tenant presently residing in unit # 3. I believe that this information would be much more pertinent in determining whether the Tenant and the occupant of the unit are substantially interfering with the Landlord's reasonable enjoyment of the residential complex or substantially interfering with her lawful rights, privileges or interests than what has happened to previous tenants in unit # 3.
8. The residential complex is a triplex which houses the Tenant in unit # 1, the Landlord in the basement unit, and a tenant in unit # 3. The Tenant has been living in the rental unit since August 1, 2008. The original lease does not contain a non-smoking clause.
9. The Tenant stated that the tenant now living in the unit # 3 is a smoker and has no issues with the Tenant or the Occupant smoking in their own rental unit. This statement was not contested by the Landlord at the hearing.
10. The Landlord did not complain that the smoking by the Tenant and the Occupant affected her enjoyment of her own unit.
11. Although the Landlord claimed that she was at risk of losing her winter sublet tenant due to the second-hand smoke coming from the Tenant's unit, the Landlord did not produce the potential winter sublet tenant as a witness, nor did the Landlord produce any communication from this person that would have suggested a lack of interest in a winter sublet due to second-hand smoke coming from the Tenant's unit.
12. Evidence showed that the Tenant has repaired the screen on the damaged door.

13. In all applications before the Board the onus rests with the applicant to prove their case on the balance of probabilities.
14. I therefore find that the Landlord has failed to prove on the balance of probabilities that the smoking by the Tenant and the Occupant has substantially interfered with the Landlord's lawful rights, privileges or interests or the Landlord's reasonable enjoyment of the residential complex.

Damages

15. The Landlord requested that the Tenant compensate her for various damages to the rental unit caused by the Tenant including damage caused to the door by the Tenant's dog scratching the door and the door frame as well as damage caused to the paint in the unit by extensive second-hand cigarette smoke
16. The Tenant recognizes that her dog jumps up on the door and damages the door and the frame and has been doing so for the last 6 years. The Tenant takes responsibility for the damage and intends to make the necessary repairs and modifications so that no further damage takes place to the door.
17. Since the Tenant continues to live and smoke in the rental unit and has taken responsibility to repair and prevent further damages done by her dog, I find it premature for the Landlord to be requesting compensation for damages at this time.
18. This order contains all of the reasons for my decision within and no further reasons shall be issued.

**It is ordered that:**

1. The Landlord's application is dismissed.

**September 15, 2014**  
**Date Issued**

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John Nolan  
Member, Landlord and Tenant Board

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