

Order under Section 69
Residential Tenancies Act, 2006

File Number: TEL-46940-14

DP and JP (the 'Landlords') applied for an order to terminate the tenancy and evict FP (the 'Tenant') because: he, another occupant of the rental unit or someone he permitted in the residential complex has wilfully or negligently caused undue damage to the premises; has committed an illegal act/ involving illegal drugs in the residential complex; has seriously impaired the safety of any person in the residential complex; and has substantially interfered with the reasonable enjoyment of the residential complex by the Landlords or another tenant, or another lawful right, privilege or interest of the Landlords or another tenant. The Landlords has also applied for an order requiring the Tenant to compensate the Landlords for the damage ant for each day the Tenant remained in the unit after the termination date.

L2application.

This application was heard in Whitby on April 24, May 27 and July 4, 2014.

The Landlords and the Tenant attended the hearings.

Landlords' witness: DW, the Landlords' contractor for 3 ½ years, provided testimony.

The Proceedings:

1. The Landlord's application and the Tenant's T2 application (TET-46787-14) were initially scheduled to be heard together on April 24, 2014. The Tenant withdrew the T2 application at that hearing.
2. The Landlord's application was then re-scheduled to be heard with a T6 application (TET-47151-14), filed by the Tenant, on May 27, 2014. Due to an insufficiency of time, the matter was adjourned.
3. An interim order (TEL-46940-14/TET-47151-14-IN) was issued on May 28, 2014 outlining terms of conduct for compliance by the parties.
4. At the re-convened hearing on July 4, 2014, the Tenant contacted the Board on the day of the hearing, and at the hearing, requested that the Board withdraw the T6 application. The T6 application has been withdrawn as requested and that file is closed.
5. The male Landlord indicated that he had complied with the interim order in regards to serving written notice of entry, however much of the Tenant's conduct that led to the filing of the application continued and had escalated during the interim. The Tenant's response was that while the Landlord came to the door on one occasion he did not attempt to gain entry to conduct work.

6. The male Landlord provided most of the evidence involving his interactions with the Tenant.

Evidence/Facts/Determinations:

1. The residential complex contains 6 units. The Landlords and their family, including young children reside in one of the units. Other tenants also have young children, and 1 of the tenants is pregnant. The Tenant moved into the unit in January of 2014. The units are in close proximity of each other.
2. The Landlords alleged that the Tenant's on-going conduct has substantially interfered with the Landlords' and the other tenants' reasonable enjoyment, lawful right privilege and interest; he has wilfully damaged the rental unit (Form N5); committed an illegal act in the unit including activities involving illegal drugs (Form N6); and seriously interfered with the safety of another person(N7). The Landlords gave evidence as follows.
3. The Landlords listed many dates during the month of February 2014 when the distinctive smell of marijuana began emanating from the Tenant's unit and became a cause for concern by the Landlords and other tenants in the complex, who began complaining to the Landlords. In March the Landlord approached the Tenant in an attempt to have him cease the offensive smoking in the unit. Although the Landlord was assured that the behaviour would cease, it did not and the Landlords and the other families continued to experience the pervasive marijuana odour. One tenant threatened to move out if the Landlords did not have the Tenant cease such conduct. The Landlords invited police intervention in March to no avail as the smell of marijuana continued emanating from the Tenant's unit on a regular basis. As well, the Landlord has noticed the distinctive smell of marijuana while he was in the Tenant's unit.
4. Additionally, the Landlord and other tenants were bothered by noise and disturbances created by loud partying and the high level of people traffic who were coming and going from the Tenant's unit at all hours of the day and night.
5. The Tenant became hostile, particularly towards the male Landlord. He began approaching the Landlord in a confrontational manner and would follow the Landlord around while the Landlord was engaged in activities such as lawn mowing, around the property. He would swear, and curse at the Landlord in an attempt to provoke the Landlord. Despite being ignored, the Tenant would persist including shouting threats at the Landlord. For example, on one occasion the Tenant banged on the window of the Landlord's car repeatedly when the Landlord would not respond. In April the Tenant also attempted to discourage a new tenant from moving into the complex. The Landlord indicated that due to the Tenant's hostile and uncooperative conduct he has had to invite police intervention on at least 6 occasions.
6. The Tenant would often appear with cell phone in hand, and for no apparent reason photograph/record the Landlord's activities, including occasionally taking photographs of the Landlords' 7-year-old daughter.

7. The Landlords went on to testify that the Tenant has deliberately damage the rental unit, and would then lodge false maintenance complaints with by-law/City officials. The Landlords learned that the Tenant made more than 20 such calls to City officials. For example, the Landlord testified that the Tenant: removed the smoke alarm which had been equipped with a 10 year lithium battery, in an attempt to have the Landlord fined "\$10,000.00" by the City; he removed closet shelving and a firewall ceiling in the closet; he removed part of the new vinyl closet flooring and placed it outside, cut away a strip of laminate flooring; removed a cabinet from the unit placing it outside; and he cut off a piece of the drain pipe, and left the drain disconnected from under the bathroom sink. The Landlord found that the Tenant had dismantled the downspout area of the shower faucet; and the Tenant left the windows opened during the winter months causing increased heating/electricity costs.
8. A by-law officer attended the unit in March and again in April of 2014. The Landlord was required to repair the broken bath tub faucet, replace the missing flooring in the closet, as well as drywall in the ceiling, repair the bathroom sink plumbing which was found to be loose when the officer first attended in March 20 and was later found with a piece cut off; repair the closet and strip of vinyl flooring.
9. The Landlords claimed their attempts to conduct repairs, normally initiated by text requests, have been obstructed by the Tenant who would demand more specifics regarding activities and required time to conduct activities before allowing entry. As well the Landlord stated that on occasions when he attended the unit, the Tenant's hostile conduct towards him was such that he would leave as a means of avoiding confrontation.
10. The Landlord hired a contractor to fix the deficiencies/damages in the unit, however, as of the date of the last hearing, the Landlord had been unable to complete the work because of the Tenant's continued hostile demeanour, denial and obstruction to entry. The Landlord indicated that City/by law officials have been apprised of the situation and in consideration of the Landlord's inability to gain the entry/cooperation from the Tenant they have extended the deadline for completion. On one occasion, the Landlord stated that he was only able to enter the unit to conduct repairs by ensuring that the by-law officer was present.
11. A fire inspector visited the unit with the Landlord in March in regards to the smoke detector. During the inspection the officer showed the Landlord that part of the closet ceiling/ drywall had been removed, and drugs and drug paraphernalia were found stashed in the cavity created. The inspector pointed out that the removed area was a firewall between the Tenant's and the upper floor unit, and its removal posed a fire hazard. It was explained that as in the event of a fire there would be no barrier between the Tenant's and the upper unit. The Landlords were required to repair/replace the firewall. The Landlords indicated that they have been unable to do so to date, including an attempt to attend the unit after the interim order was issued, due to the Tenant's on-going, aggressive conduct. The fire inspector has allowed the Landlords additional time to conduct the repairs as a result.
12. In March while the Landlord and his contractor were in the unit with the bylaw officer, the Landlord provided photographs showing plastic bags of marijuana found in the living

room and closet, a “bong” and a small scale, described as the type used in illegal drug activities.

13. DW, testified that as a general contractor/plumber he has been contracted by the Landlords to perform work for over 3 years. He stated that he was in the unit in March to assess work that had to be done, as well as later in April to conduct the work. The witness also testified that sometime in October/November 2013 he had conducted repairs in the unit before the Tenant moved into the unit. According to the witness he had re-done the plumbing work in the unit, including installing the vanity/bathroom sink, counter top and kitchen cabinetry. In March while in the unit with the Landlord, he noticed, among other things, that the drain pipe leading from the bathroom sink had been cut/destroyed and the down spout in the bath tub was dismantled, which he repaired in April. He also replaced a soft area of flooring with board as well as the closet flooring.
14. The witness also stated that he was with the Landlord when photographs of the bags of marijuana, drug paraphernalia (bong, scale) were taken, which he had also observed on the coffee table. He also stated that he noticed an exhaust fan with “plug ins” attached, which the witness explained was a configuration ordinarily used in “grow ops”. When questioned by the Tenant as to how he had arrived at such conclusion, the witness responded that his familiarity with such contraption was due to his 6-year involvement in the penitentiary system.
15. The Landlords pointed out that nothing had changed after the interim order was issued as the Tenant continued to be obstructive including refusing notice of entry texted to the Tenant on June 14 for a June 24 entry. When he attended the Landlord stated that the Tenant began yelling demands and told them to go away, which he did in order to avoid confrontation. They had smelled marijuana as recently as 2 weeks before the reconvened hearing.
16. The Landlord stated that the Tenant continues to become irate, uncooperative, and has created a hostile environment to the point where the male Landlord refuses to go near his unit, including mowing the lawn in the area of the Tenants unit, in other to avoid the Tenant’s aggression/confrontation. The Landlord also stated that other tenants have witnessed the tenants conduct towards him and have expressed consternation about the unpredictable conduct of the Tenant, to the point where they would not attend as witnesses for fear of repercussions from the Tenant.
17. The Landlords’ evidence included an e-mail and letter from 2 other tenants dated April 22 and April 24. In one of the letters the writer indicates that they live above the Tenant’s unit. The writer claims that the Tenant has disturbed them by: constantly smoking marijuana in his apartment; he has asked him to stop because his girlfriend is pregnant; the Tenant made false accusations about him to police; loud noises and partying coming for the Tenant’s unit; “a lot of banging noises and the sound of a drill coming from his apartment; and “I have heard and seen him approach JP (male Landlord) unprovoked, yelling and cursing at him.” (Text in parenthesis for clarification purposes only.) The writer also states, “I have heard him tell JP the he was going to remove the fire alarm in his apartment and was then gong to call the fire department so that they (the landlords) would be fined \$10,000.”

18. Another tenants writes to the Landlords: “ I have come to you and asked you about the extream(sic) smell of pot-weed that has been coming into the apartment from the other tenant, I believe is in apartment 6. It happens at least 3 to 5 times a week that I smell the use of this drug. I have a 3 year old son that is with me 50% of the time and the smell and the fact that narcotics are around him and he can smell them and asks about that smell concerns me greatly...The amount of times that this happens is not good, I have asked you about it repeatedly over and over for months now, and seemingly with no resolve...Again I am asking you again JP to resolve this issue as you are the landlord. I feel like if this matter cannot be resolved I will be forced to find another place for me and my son...”
19. The Landlords also stated that after the interim order was issued: the Tenant falsely accused the female Landlord of pushing him downstairs and the male Landlord has received at least 4 text messages from the Tenant each week containing false accusations; the Tenant broke into the utility room; and the Landlords are suspicious of the tire of their car tire being flattened. The female Landlord indicated that she is constantly fearful of the Tenant’s malicious and unpredictable conduct; and that the stress created as a result, affects other aspects, including work, of their lives.
20. The Tenant exercised his right to cross-examine the Landlords and their witness and to provide evidence in response to the Landlords’ claims. The Tenant was directed that only evidence related to the issues in question would be considered. The Tenant claimed that the Landlords’ evidence was false, the written letters provided were not from other tenants, but had been created by the Landlords, and the Landlords had planted the marijuana and drug paraphernalia in his unit. It was the Tenant’s position that he had done nothing wrong and the Landlords’ claims against him were frivolous and vexatious.
21. Specifically, the Tenant gave evidence as follows. While he admitted that he owned a “bong” that was different from the one photographed, he stated that he did not smoke, conduct “recreational” activities in the unit. The Tenant admitted that he owned the exhaust fan with plug ins observed in the unit, but denied ownership of the marijuana other paraphernalia depicted in the photographs; he believed other people smoked in their units; he did not remove the smoke detector as the Landlords claimed, because the unit was not initially equipped with one, and he admitted referring to a potential fine if the unit was not equipped with one, on a cautionary rather than a threatening note to the Landlord. The Tenant produced copies of City notices dated 2012 that he indicated he had secured to show that the Landlords were in the habit of not equipping the units with smoke detectors. One of the notices indicate that a smoke detector monitor was installed in the Tenant’s unit in the year 2012.
22. The Tenant stated that he removed wooden shelf/shelves from the closet, with intentions to put them elsewhere; he denied removing the firewall/drywall from the closet ceiling, to create a cavern, as the hole was already in the ceiling when he moved into the unit; other than removing a piece of corroded pipe, in February or March, and capping it to prevent noxious fumes from entering the unit, he denied cutting/disconnecting the bathroom sink drain pipe as depicted in the photograph provided. When questioned, the Tenant stated that the pipe was in the disconnected condition at the start of the tenancy, and he had not been able to use the sink until it was repaired in April by the Landlord. He stated that he

had not cut the flooring, but that the piece of linoleum had been found, cut to fit the floor, rolled up as it had not been installed by the Landlords.

23. The Tenant admitted that he had removed the cabinet out of the unit with the Landlord's permission in February, which the Landlords had told him belonged to the previous tenants. The Tenant admitted that he occasionally opened the windows, for approximately an hour each time during the winter months, to allow "fresh air" into the unit. He denied breaking into the utility room as the Landlord claimed. While the Tenant did not deny that the Landlord attended the unit on June 24 but did not enter, it was his position that the Landlord was not there to conduct unfinished work.
24. The Tenant did not void the Form N5 Notice of Termination within 7 days of service by paying \$505.00 for damages claimed.

Analysis/Conclusion:

25. Did the Tenant: commit an illegal act on the premises/involving illegal drugs; seriously impair safety; wilfully damaged the rental unit/residential complex; and substantially interfered with reasonable enjoyment, lawful right, privilege or interest of the Landlord or other tenants? The burden rested with the Landlords to prove their claims "on a balance of probabilities". In my view, and for the following reasons, I find that the Landlords met their burden and provided a preponderance of evidence to support their claims.
26. Wilful damages: Considering clear evidence that the Landlords had been using the services of a contractor for over 3 years, and that contractor, who is also a licensed plumber had, among other things, conducted plumbing work in the unit shortly before the Tenant moved in, it is unlikely that he would have left a broken bathtub downspout, a disconnected bathroom sink drain pipe after installing the vanity, missing flooring, or removed the firewall leaving a cavernous hole in the closet ceiling. In fact, the Landlord indicated that he was not aware of what appears to be a stairwell in the area opened up in the closet until it was pointed out to him by the fire inspector; and the contractor indicated that a piece of the drain pipe, had clearly been cut off after the Tenant moved in.
27. The Tenant's admittance that he had tampered with the drain pipe without the Landlord's permission, leads me to believe that the Tenant was responsible for the complete dismantling of the drain. Furthermore, it is unlikely that he would have been content to live in the unit for months without a functioning bathroom sink, using the bathtub to conduct toiletries as he claimed, or a broken bathtub downspout. Similarly, while the Tenant admitted that he had removed shelving from the closet, for no apparent reason, I find it unlikely that the presence of a cavernous hole in the closet would have gone without being reported to the Landlords. Given that both fire inspector, Landlord/contractor observed illegal drugs and paraphernalia stored in the closet ceiling area, it is more likely than not that the space was created by the Tenant, his guest, or someone he permitted in the unit as a hiding place for illegal drugs/drug paraphernalia.
28. The Landlord stated that bathroom cupboard/cabinet was included with the unit and the Tenant was not directed to discard it. Had they given the Tenant permission to dispose

of the cabinet, why would the Landlord then claim this as an issue in their application? I find no credibility in the Tenant's claim that he was permitted by the Landlords to discard the bathroom cabinet.

29. On a balance of probabilities, I find that the Tenant deliberately damaged the rental unit, by cutting/disconnecting the bathroom sink drain, breaking the bathtub downspout, and removing the firewall to create a cavern/hiding place in the closet. It is also likely that the banging/drilling sounds from the Tenant's unit noted in the letter provided by another tenant residing in the unit immediately above were due to the damages to the flooring, ceiling, drywall/firewall by the Tenant.
30. Illegal act: The Landlords' evidence, including photographs and the witness's testimony indicate bags of marijuana and items used in drug related activities were found in the Tenant's unit. While the Tenant would have the Board believe that the Landlords had discreetly placed the items in his unit to discredit him, the Tenant provided no grounds, including when and how the Landlords allegedly entered his unit to do so, especially in light of evidence that there was on-going, text communication between the parties in regards to when the Landlord would be attending the unit.
31. Contrary to the Tenant's claim, I find it unlikely that the Landlords' evidence that the regular smell of marijuana smoking in the unit was bothersome, and that as a result they had approached the Tenant to cease this activity was fabricated. In fact, the Tenant did not deny that the Landlord had asked him to stop smoking in the unit and that he had promised to do so.
32. I find no credibility or grounds that would support the Tenant's claim that the written complaints, including by e-mail, identifying the complaining tenants, could have been documents produced by the Landlords. The evidence indicates that both the Landlords and other tenants and their families have objected to the smoking of marijuana in the Tenant's unit. There is no indication of a hidden agenda, or motivation for the Landlords or other tenants to falsely accuse the Tenant.
33. Furthermore, the Tenant admitted that he owns "a bong". Why would the Tenant own such an item, if not to use for its intended purpose? It is my understanding that this type of item is used in illegal drug activities, and was likely used in the rental unit. It would appear that by stating that he does not smoke marijuana in the unit, and that the illegal drugs and items found in the unit did not belong to him, the Tenant would have the Board believe that the Landlords', their contractor, and written submissions by 2 other tenants were all false.
34. While I find insufficient evidence that would lead me to believe that the Tenant is involved in drug trafficking activities with regards to the people traffic in his unit, the evidence undoubtedly indicates that the Tenant had illegal drugs in this unit, some of which was found hidden in an area created for this purpose, and that given the number and frequency of complaints, the Tenant, his guests, or an occupant of the unit have been smoking marijuana in the unit on a regular basis.

35. Marijuana is listed among the illegal drugs. The Tenant has therefore committed an illegal act by possessing illegal drugs in the unit, and as the paraphernalia indicates he has also been smoking marijuana in the unit and/or permitted someone else to do so.
36. Serious impairment: By removing the firewall in the closet to create a hiding place, I find that the Tenant created the potential for serious impairment of safety. The removal of the barrier, in the event of a fire, would allow flames to quickly spread to the upper floor; hence the need for a firewall that meets required standards.
37. It is unlikely that the Landlords would have failed to equip each unit in the complex with smoke detectors, given the risk that would be imposed on their property/interest, or the implication for securing insurance coverage for the property. Furthermore, the City notices that the Tenant secured with the intention of proving a pattern of negligence by the Landlords in this regard, indicate the opposite, that a monitor was installed in the unit in 2012. There was no reason to believe that the Landlords removed it. I find, on a balance of probabilities and including the Landlords' testimony supported by another tenant's written submission, that the Tenant maliciously removed the smoke detector, and reported to the property standards department that the Landlords had failed to install such a unit. As a result, the Landlord was forced to replace the unit.
38. I find that removing the firewall and the monitor, constitute a finding of potential serious impairment, as well as substantial interference with the Landlords' lawful right, privilege and interest for ensuring fire safety in the complex.
39. Substantial interference: The Tenant provided no response to the Landlord's claim that he constantly screamed, yelled and attempted to provoke the Landlord to anger. Following the Landlord around the complex, photographing and recording his activities, photographing others in the complex and obstructing the Landlord's efforts to conduct work in the unit in a timely manner, to the point where City officials had to be in attendance, were activities undoubtedly meant to intimidate, harass and irritate the Landlords.
40. In my observation, the Tenant demonstrated marked hostility towards the Landlords, in particular the male Landlord, in the hearing room, which that I find supports the Landlords' claim that in addition to the above noted annoyances, the Tenant went to great lengths to discredit the Landlords. He secured historical City documents, he barraged City officials with unfounded claims about maintenance and made malicious claims about being pushed by the female Landlord.
41. Collectively, the Tenant's actions including: the ongoing illegal smoking/use of marijuana in the unit; his disregard for increasing heating/electricity costs for the Landlords demonstrated in the Tenant's opening of windows during the winter months; the deliberate damages made to the property by the Tenant; and the potential serious impairment caused by removal of the firewall and smoke detector, undoubtedly have substantially interfered with the Landlords' and other tenants reasonable enjoyment of the complex, as well as their lawful right interest and privilege.

Section 83:

42. Both parties were given an opportunity to make submissions regarding section 83 of the Act. The Landlords described the situation, due to the Tenant's conduct as being "a nightmare for the Landlords and other tenants. It is not surprising, especially given the Tenant's blatant denial of any wrong doing, even in the face of multiple individual observations and photographs of drugs and paraphernalia in his unit, that the Landlords pleaded that the situation could only be remedied by terminating the tenancy, in short order.
43. The Tenant claimed he was receiving social assistance and it was therefore financially inconvenient for him to move out of the unit before October 2014, and especially because he had pulled his life together from a criminal past. In my view this does not constitute reasonable grounds for granting relief from eviction; especially in light of the Tenant's demonstrated malice and hostility towards the Landlords, his denial of any responsibility or remorse for his activities, that would lead me to believe that the Tenant had intentions of correcting his behaviour, should the tenancy continue.
44. I find it would be unfair to the Landlords and the other tenants for the tenancy to continue. However, I found it would not be unreasonable to extend the termination date to July 31, 2014, providing the Tenant ceases any further conduct such as those claimed in the Landlords' application.
45. At the conclusion of the hearing, the Tenant's audible remarks were that the proceedings were a "farce", and he appeared intent on knowing the next steps available to him, and voiced intentions to appeal my decision.
46. In my view, the Tenant's remarks indicate a disregard of the process, the Landlords and other tenants' rights, as well as his responsibilities under the Act, and further validate my decision for terminating the tenancy.
47. Based on the relevant evidence provided, and for the reasons contained herein, the following order is issued.

It is ordered that:

1. The tenancy between the Landlords and the Tenant is terminated, as of July 31, 2014. The Tenant must move out of the rental unit on or before July 31, 2014.
2. Starting immediately, and for the remainder of the tenancy, the Tenant shall ensure there are no and cease/desist from any further activities in the unit/complex, such as, but not limited to those claimed in the application, that: substantially interfere with the reasonable enjoyment of the rental unit/residential complex, lawful right, privilege or interest of the Landlords and other tenants; wilfully/negligently damage the property; impair safety; and the Tenant shall refrain from illegal activities including those involving illegal drugs.

3. If the Tenant fails to comply with the terms and conditions set out in paragraph 2 above, the Landlord is authorized to file this order with the Court Enforcement Office (Sheriff) immediately upon receipt/after the Tenant's failure to comply, so that the eviction may be enforced.
4. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or before July 31, 2014. The Sheriff is requested to expedite the enforcement of this order.
5. The Tenant shall also pay to the Landlords \$170.00 for the cost of filing the application.
6. If the Tenant does not pay the Landlords the full amount owing on or before July 27, 2014, he will start to owe interest. This will be simple interest calculated from July 28, 2014 at 3.00% annually on the outstanding balance.

2014 CanLII 49611 (ON LTB)

July 16, 2014
Date Issued

Claudette Leslie
Member, Landlord and Tenant Board

Toronto East-RO
2275 Midland Avenue, Unit 2
Toronto ON M1P3E7

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

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on February 1, 2015 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.