

Order under Section 69
Residential Tenancies Act, 2006

File Number: TNL-62490-14

C.A. (the 'Landlord') applied for an order to terminate the tenancy and evict S.J.(the 'Tenant') because she, another occupant of the rental unit or someone she permitted in the residential complex, has extraordinary wilfully or negligently caused undue damage to the premises. The Landlord has also applied for an order requiring the Tenant to compensate the Landlord for the damage. The Landlord also applied for an order to terminate the tenancy and evict the Tenant because she, another occupant of the rental unit or someone he permitted in the residential complex has 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; and because the Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person. The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

The Landlord also applied for an order to terminate the tenancy and evict the Tenant because she, another occupant of the rental unit or someone she permitted in the residential complex substantially interfered with the reasonable enjoyment of the residential complex by the Landlord or by another tenant, or has interfered with another lawful right, privilege or interest of the Landlord or another Tenant. The Landlord also claimed that the Tenant wilfully or negligently caused undue damage to the rental unit.

It is important to note that the Landlord served two notices of termination (Forms N5 and N7) with substantially similar allegations. The Landlord's allegations of undue damage flow from sections 62 and 63 of the *Residential Tenancies Act, 2006* (the 'Act').

This application was heard in Toronto on October 14, 2014.

Only the Landlord and the Landlord's representative, B.L.S., attended the hearing.

Determinations and Reasons:

Preliminary Matter

1. At the hearing, the Landlord's representative conceded that the Landlord failed to give the Tenant proper notice of termination under subsection 64(2)(a) of the *Residential Tenancies Act, 2006* (the 'Act') to terminate the tenancy for substantial interference, or interference with another lawful right, privilege or interest, or wilful or negligent damage to the rental unit or residential complex. Instead of giving the required 20 days' notice, the Landlord gave only 19. The Landlord's Form N5 notice of termination is therefore void.

The Landlord's Application

2. The Tenant has smoked cigarettes in the rental unit and residential complex. This activity is prohibited in the tenancy agreement. Based on the evidence adduced at the hearing, I find that, because the Landlord suffers emphysema and resides in the residential

complex, he and the Tenant agreed at the start of the tenancy that the residential complex would be smoke-free. The written lease reflects this agreement.

3. This conduct has substantially interfered with the Landlord's reasonable enjoyment of the residential complex, and further interfered with the Landlord's lawful right to reside in a cigarette smoke-free residential complex, in accordance with the terms of the written tenancy agreement.
4. The tenancy between the parties shall be terminated because of the Tenant's substantial interference with the Landlord's reasonable enjoyment of the residential complex, and because the Tenant interfered with the Landlord's lawful right to rely on the tenancy agreement and live in a cigarette smoke-free environment.
5. The Tenant has wilfully or negligently caused undue damage to the rental unit's laundry room door and a transom window in the rental unit. However, there is no evidence that the damage caused is sufficient for the Landlord to have given the Tenant a notice of termination pursuant to subsection 63(1)(a) of the Act. That is, the extent of damage to the rental unit, while not trivial, does not reach a level that warrants the shortened notice of termination period under subsection 63(1)(a) of the Act. Rather, the Landlord should have served the Tenant a notice of termination under subsection 62 of the Act, which requires the Landlord to give the Tenant 20 days' notice of termination.
6. Although the tenancy will not be terminated because of damage to the rental unit, the Landlord is still entitled to recover the amount he has incurred, or will incur, to repair the damage. The Landlord is therefore entitled to recover \$322.00 from the Tenant to pay for the cost of replacing or repairing undue damage caused by the Tenant to the rental unit.
7. Although the Landlord proved, on a balance of probabilities, that symptoms related to his emphysema are triggered by the presence of cigarette smoke in the residential complex, the Landlord failed to adduce sufficient evidence to prove that his safety was seriously impaired. The Landlord, for example, did not adduce evidence to show that he was at risk of imminent harm. The Landlord therefore failed to prove that the Tenant seriously impaired anyone's safety at the residential complex.
8. The Landlord failed to prove, on a balance of probabilities, that the Tenant interfered with the Landlord's enjoyment of the property by allegedly loitering in the residential complex's backyard and driveway. The Landlord's representative asserted that the tenancy agreement permits the Tenant to use the rental unit only, but not the residential complex's appurtenant grounds. I do not find these submissions persuasive. Rather, I adopt the *contra proferentem* rule of contractual interpretation, and find that, because the written lease does not prohibit the Tenant from accessing the backyard and driveway, the Tenant is entitled to use those facilities.
9. The Landlord collected a rent deposit of \$900.00 from the Tenant and this deposit is still being held by the Landlord.

10. Interest on the rent deposit is owing to the Tenant for the period from April 2, 2013 to August 31, 2014
11. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
12. I am satisfied from the evidence adduced at the hearing that the Tenant smokes cigarettes in the residential complex, contrary to the tenancy agreement. The Landlord, who suffers from emphysema, is particularly vulnerable to the effects of second-hand smoke and, accordingly, agreed with the Tenant at the start of the tenancy that the residential complex would be a cigarette smoke-free building. Unfortunately, the Tenant has failed to comply with the tenancy agreement, and the result is that the Landlord's reasonable enjoyment of the residential complex is seriously interfered with, and the Landlord is unable to enjoy his lawful right to live in a smoke-free dwelling. It is therefore appropriate to terminate the tenancy. Because the Tenant did not attend the hearing to give submissions under section 83 of the Act, the eviction date will not be postponed.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated, as of October 27, 2014. The Tenant must move out of the rental unit on or before October 27, 2014.
2. The Tenant shall pay to the Landlord \$322.00, which represents the reasonable costs of repairing the damage.
3. The Tenant shall pay to the Landlord \$450.96, which represents compensation for the use of the unit from September 1, 2014 to October 16, 2014, less the rent deposit and interest the Landlord owes on the rent deposit.
4. The Tenant shall also pay to the Landlord \$29.59 per day for compensation for the use of the unit from October 17, 2014 to the date he moves out of the unit.
5. The Tenant shall also pay to the Landlord \$170.00 for the cost of filing the application.
6. If the Tenant does not pay the Landlord the full amount owing on or before October 27, 2014, he will start to owe interest. This will be simple interest calculated from October 28, 2014 at 3.00% annually on the balance outstanding.
7. If the unit is not vacated on or before October 27, 2014, then starting October 28, 2014, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
8. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after October 28, 2014. The Sheriff is requested to expedite the enforcement of this order.

9. All the reasons for this order are contained herein, and no further reasons will be given.

October 16, 2014
Date Issued

Harry Cho
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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on April 28, 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.