

Order under Section 69
Residential Tenancies Act, 2006

File Number: TSL-51247-14

NARC (the 'Landlord') applied for an order to terminate the tenancy and evict TT (the 'Tenant') because he, 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 or another tenant. The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard in Toronto on May 15, 2014 in the presence of MZ appearing for the Landlord, and in the presence of the Tenant.

The following witnesses were called by the Landlord:

FYC, another tenant of the residential complex; and SD, the manager of the complex.

All the reasons for this order appear below and no further reasons shall be issued.

Evidence and Determinations:

1. This application involves the impact the Tenant's cigarette smoking had on another tenant and on a lawful right, privilege or interest of the Landlord's.
2. The residential complex is a mid-rise building consisting of condominiums and rental units. The building is not designated as a non-smoking complex. There are only two units on the floor where the Tenant's rental unit is located.
3. Over the past year, the Landlord has received numerous complaints regarding the extent of the Tenant's smoking and the impact it had on another tenant, FYC, who resided in the adjoining rental unit. It was the evidence before me that the cigarette smoke emanating from the Tenant's rental unit was so pervasive that the odour and the actual smoke could be seen in the neighbour's unit and the common area hallway. FYC testified as to the substantial impact the odour of cigarette smoke had on her enjoyment of her unit.
4. Over the past year, the Landlord undertook a number of measures to reduce and/or eliminate cigarette smoke migration from the Tenant's rental unit to the adjoining unit and common area hallway. The work involved blocking vents, replacing older doors with new doors and seals, sealing radiators, pipes, etc. Notwithstanding these measures, the effect of cigarette smoke on the other tenant continued to be an issue.
5. On February 28, 2014, FYC vacated her rental unit over concerns of the continuing impact that the Tenant's cigarette smoking had on her enjoyment of the unit and ultimately on her health.

6. The Landlord subsequently served the Tenant with a Notice to Terminate a Tenancy Early ('N5 Notice') approximately two weeks after FYC vacated her rental unit.
7. SD testified that after FYC vacated the rental unit, the Landlord undertook major work on the unit. Although the work has been completed, the unit has not been re-rented or marketed as a condominium for sale because of the on-going issue of the odour of cigarette smoke.
8. Although there can be no dispute that the Tenant is permitted to smoke in his unit, the impact of the quantity of cigarettes he consumes, or more specifically the sheer volume of cigarette smoke emanating from his unit, has substantially interfered with another tenant's reasonable enjoyment of her rental unit.
9. It was the evidence before me that the Tenant did not void the N5 Notice because he did not cease the behaviour complained of during the seven days following service of the N5 Notice.
10. The Landlord is seeking an order to terminate the tenancy and evict the Tenant.
11. On any application to the Board for eviction the Board is mandatorily required to consider all the circumstances and determine whether or not it would be unfair to grant relief from eviction pursuant to section 83 of the *Residential Tenancies Act, 2006* (the 'Act').
12. The Tenant has been residing in his rental unit for approximately 22 years. Although he has an office downtown, he tends to do much of his work within the rental unit. The Tenant has done a number of things to reduce the impact of his smoking including purchasing an air purifier and smoking out on the balcony more often. The Tenant wishes to remain in the unit.
13. In considering whether to grant relief under section 83 the Board must consider the impact of permitting the Tenant to remain in the unit and how the conduct that gave rise to the application could be modified or restricted to minimize the impact on other tenants. Although I am satisfied that the Tenant's smoking substantially interfered with his neighbour's reasonable enjoyment while she was still living there, the issue is now moot as the unit is currently vacant.
14. Similarly, although I am satisfied that a lawful right, privilege or interest of the Landlord's was substantially interfered with due to the fact the neighbouring tenant moved out as a result of the Tenant's smoking, the Landlord's witness, SD, says they have not tried re-renting or selling the unit because of the on-going issue of the odour of cigarette smoke. This means the evidence does not establish that the Landlord cannot rent the unit to a prospective tenant or sell it to a buyer because of the Tenant's smoking. In other words, the Landlord is afraid, but does not know and cannot demonstrate that the same complaints will arise in the future.
15. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, and find that it would not be unfair to grant relief from eviction pursuant to

subsection 83(1). I say this because I am not satisfied that the Landlord cannot re-rent or sell the unit to someone who will not be disturbed by the Tenant's smoking, no one is currently being impacted by it, the Tenant has lived there for 22 years, and his tenancy agreement gives him the right to smoke in his unit. As a result, the Landlord's application shall be dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

May 29, 2014
Date Issued

Guy Savoie
Vice Chair, 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.