

Order under Section 69
Residential Tenancies Act, 2006

File Number: TEL-00016

In the matter of: [Address of Rental Unit]
Toronto ON

Between: Astra Fernandes Landlord

and

[Tenant] Tenant

Astra Fernandes (the 'Landlord') applied for an order to terminate the tenancy and evict [Tenant] (the 'Tenant') because he, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person.

This application was heard in Toronto on February 8, 2007.

The Landlord and the Tenant, assisted by Duty Counsel, Nancy Hindmarsh, attended the hearing.

Determinations:

1. The complex is a 1 ½ storey bungalow. The Landlord and her family live on the lower level and the Tenant lives on the upper level. Evidence indicates that up until January 2007, the parties have shared a familial relationship including: the Tenant assisting the Landlord with chores such as shovelling snow from the driveway, gardening; and attending church together during the past Christmas season. The Landlord testified that the Tenant's behaviour threatens her and her husband's well being, especially since her husband is particularly vulnerable because of medical complications.
2. The Landlord testified that: the Tenant leaves his window opened, exposing her family to cold drafts, which could also lead to her husband developing pneumonia; the Tenant's occasional smoking in the unit poses a health hazard for her family; and that she is fearful of the Tenant's alleged aggressive behaviour. One example of the Tenant's alleged aggression provided in the Landlord's evidence is an incident which took place on January 27, 2007. She claimed that she became fearful when she told the Tenant that she did not want his help and he refused to comply with her requests to refrain from shovelling the driveway.
3. The Tenant denied the Landlord's allegations that he has impaired their safety, pointing out that his actions have been well intended and designed to be helpful to the Landlord. He testified that on the occasions where he has been warned about smoking in the house, he has complied and has been apologetic to the Landlord. He also agreed that, on occasions,

he has left a small crack in the window for periods of approximately five minutes, in order to get fresh air, but promptly closes the window when asked to do so. He testified that on January 27, 2007 he continued to clear the snow, despite the Landlord's demand not to do so, only because such activities made him happy.

4. While the Landlord might have decided to sever the relationship with the Tenant and reject his benevolence, I find that the Landlord's perceived fear is likely attributable to her dissatisfaction with the Tenant rather than because of the Tenant's actions/behaviour.

5. Section 66 of the Act states that a tenancy may be terminated if,

“an act or omission of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant seriously impairs or has seriously impaired the safety of any person...”

6. Based on the nature of the Tenant's actions, I do not find that the Tenant intended to impair, or that his actions/behaviour constitute serious impairment of the Landlord's safety as per the above section. I find no reason to allow the Landlord's application to terminate the tenancy.

Therefore, it is ordered that:

1. The Landlord's application is dismissed.

February 19, 2007

Date Issued

Claudette Leslie

Member, Landlord and Tenant Board

Toronto East/Durham Region
Unit # 2, 2275 Midland Avenue
Toronto ON M1P 3E7

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