

Order under Section 69
Residential Tenancies Act, 2006

File Number: TNL-00798

In the matter of: [Address of Rental Unit]
Richmond Hill ON

Between: Vladyslav Logvynovsky Landlord

And

[Tenant] Tenants
[Tenant]

Vladyslav Logvynovsky (the 'Landlord') applied for an order to terminate the tenancy and evict [Tenant] and {Tenant] (the 'Tenants') because they have substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord and other tenants in a residential complex.

This application was heard in Newmarket on March 13, 2007.

Both the Landlord and the Tenants attended the hearing.

Finding of Facts:

The Tenant rents the basement unit of a split-level house. The Landlord resides on the ground floor and there is another tenant residing on the upper floor. There is disagreement between the Landlord and the Tenant as to whether the Landlord told the Tenants (prior to the lease agreement was signed) that keeping a dog in the premise is not allowed. Therefore, I will not deal with the issue of the "keeping of a dog" as a ground for eviction in spite that the Landlord provided a doctor's letter indicating that she 'suffers from allergy to dogs with the following symptoms: coughing, sore throat, redness, itchy, dry skin.'

The Tenant stated that at the time when he discussed with the Landlord about tenancy, the Landlord told him that no smoking was allowed inside the house, and he had committed to the Landlord that he would not smoke in the house. This "verbal agreement" between the Landlord and Tenant forms part of the tenancy and the Tenant is required to abide by it.

The Tenant stated he smoked "only once" in the house. However, the Landlord testified that the Tenant smoked frequently in the house. The Landlord's position is supported by a sworn affidavit from the other tenants in the same house, and the tenants stated in the affidavit that the Landlord "made it very clear to us that if we are to continue to occupy the said premises, we are not to smoke and not to have any pets. The tenants also stated in the affidavit that they "complained to the Landlord about the smell of cigarette smoke on February 3, 6, and 17, 2007." Another

affidavit by the babysitter of the Landlord states that she smelled cigarette smoke on February 3, 6, 10, 13, 16, 17, 19, 22 and 28, 2007.

The Tenant denied that he smoked in the house for more than once, but he did not offer any evidence to refute the evidence provided by the Landlord concerning the days that there were cigarette smoke in the house.

I find the Landlord's evidence credible. Based on a balance of probability, I find that the Tenant did smoke in the house a number of times. This violated the agreement that he had with the Landlord, and his action causes harm to the health of the Landlord and other tenants in the house. By smoking in the house continually, the Tenant has substantially interfered with the Landlord's and the other tenants' reasonable enjoyment of the residential complex.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before April 30, 2007.
2. If the unit is not vacated on or before April 30, 2007, then starting May 1, 2007, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. 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 May 1, 2007. The Sheriff is requested to expedite the enforcement of this order.
4. The Tenant has the sole option of vacating the premise before April 30, 2007 and the Landlord shall refund any unused portion of rent to the Tenant based on a per diem rate of \$27.95.

March 19, 2007
Date Issued

Vincent Ching
Member, Landlord and Tenant Board

Toronto North Region
7th Floor, 47 Sheppard Ave E
Toronto ON M2N 5X5

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