

Order under Section 31  
**Residential Tenancies Act, 2006**

**File Number:** TST-20785-11

O.K. and G.K. (the 'Tenants') applied for an order determining that D.I.I. (the 'Landlord') substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants or by a member of their household.

This application was heard in Toronto on November 24, 2011.

The Tenant, O.K., and the Landlord attended the hearing. E.F. attended on behalf of the corporate Landlord. The Tenant, O.K., will be referred to in this order as the Tenant in its singular form.

P.K., a tenant residing in the residential complex, testified on behalf of the Tenants. M.A., the superintendent, testified on behalf of the Landlord.

**Preliminary issue:**

1. The Tenants filed a T2 application about tenants' rights based on allegations that the Landlord substantially interfered with their enjoyment of the premises. Most of the Tenants' complaints, however, deal with issues of disrepair and are properly the subject of an application about maintenance (T6 application). The Tenant was informed accordingly. The Tenant was given an opportunity to consult with tenant duty counsel regarding his application. The Tenant declined this opportunity.
2. The Tenant also attempted to raise issues that were not set out in the application. The Tenant's position was that the additional issues were set out in a CD submitted by the Tenant, which contained the Tenant's evidence. The Tenant declined the opportunity to adjourn the matter and to amend his application to include the additional issues. As such, the additional issues were not considered in this application.

**Determinations:**

1. The Tenants have been residing in the residential complex since 1999. Their rental unit is located on the second floor, which is the top floor of the residential complex. The residential complex is approximately 50 years old.
2. The Tenants raised the following issues:
  - Garbage accumulates in the parking lot, and the common areas are not properly cleaned;
  - The outside windows are not being cleaned;

- Some rental units had broken window panes;
  - The Landlord rents out units to “rude and unpleasant people”
  - The front door was in disrepair and was noisy;
  - The rental unit was infested with mice;
  - Smoking occurs in the common areas.
3. The issue to be determined is whether the Landlord seriously interfered with Tenants’ reasonable enjoyment of the premises by failing to address the above issues raised by the Tenants.
  4. Section 22 of the *Residential Tenancies Act, 2006* (the “Act”) sets out the Landlord’s responsibility to provide quiet enjoyment of the premises to tenants. It states :

*A landlord shall not at any time during a tenant’s occupancy of a rental unit and before the day on which an order evicting the tenant is executed substantially interfere with the reasonable enjoyment of the rental unit or the residential complex in which it is located for all usual purposes by a tenant or members of his or her household (emphasis added).*

Maintenance of the common areas:

5. The Tenants’ position was that the common areas are unkempt; the floors in the hallways have not been washed for months, they are dirty and sticky. The parking lot is littered with paper, cans and other garbage. The Tenant also found a syringe and a condom in the residential complex. The Tenant did not advise the Landlord of his discovery.
6. The Landlord’s position was that the residential complex was very well maintained. It was cleaned regularly, however, it was not cleaned on a “24/7 hour basis 365 days a year”, nor was it a luxury building.
7. The superintendent testified that he cleaned the building on a regular basis. He resides in the residential complex with his family and takes pride in the building. He spot checks and cleans the premises every Wednesday, and performs a thorough cleaning on Saturdays. The superintendent admitted that there were coffee stains and some litter in the hallways or in the common areas on occasion, but when discovered, they were removed.
8. The photographic evidence submitted by the parties (taken by the Tenant) show a very well kept residential complex. The parking lot and the common areas appeared to have been reasonable well kept. Several of the photographs show garbage bags neatly lined up in the back yard by the garbage bins. The photos also show furniture stacked up at the back of the property. It was the evidence before me that the furniture was left behind by a former tenant who had moved out of the rental unit. When the items were placed for garbage pick-up at the front of the property, the City garbage collectors refused to take the furniture all at once, therefore, the Landlord moved it to the back of the property and disposed of it in parts. It was at the back of the property for about two weeks.

9. The Landlord submitted letters from other tenants confirming that the building is kept clean. These tenants were not present at the hearing to provide evidence and be cross-examined, therefore, the letters have very little probative value.
10. Based on the oral testimony of the parties and the witnesses and on the photographic evidence presented by the parties, I am not satisfied that the state of the common areas was such that it would substantially interfere with a tenants' enjoyment of the property. Considering that the property is a multi residential property one cannot expect a standard of perfection, only a standard of reasonableness.

Windows:

11. The Tenants submitted that the exterior windows were not being cleaned. This issue has been dealt with previously in order TST-02177 issued on March 11, 2009, which directed the Landlord to clean the exterior windows. The Tenants' position was that nothing has been done since the order was issued.
12. The Landlord and the superintendent testified that the windows were cleaned regularly at least twice a year, the last time in the summer of 2011.
13. The parties provided photographic evidence showing the windows. Except for one window, which appeared to have had dust built up, as the sun was shining upon it, all the windows appeared clean. There was a dispute between the parties as to whose unclean window was depicted on the photograph. The Tenant submitted that it was his window. The Landlord submitted that the window was in a different rental unit. I find it irrelevant as to whose window was shown on the photograph. If the windows in the residential complex were cleaned regularly, I would assume that all the windows were cleaned at the same time and it would not make a difference which window was depicted on the photograph. In addition, I am not satisfied that one window which may not be perfectly clean constitutes substantial interference with the reasonable enjoyment of the premises.
14. Accordingly, based on the evidence presented, I am not satisfied that the windows were in such a state of uncleanliness as to substantially interfere with the Tenants' reasonable enjoyment of the rental unit.

Smoking in the common areas:

15. The Tenants' position was that people smoke in the common stairwell almost daily. The Tenant complained to the superintendent about the smoke. The Tenant did not recall when and how often he complained to the superintendent about the second hand smoke. He did not know who the smokers were. It was undisputed evidence before me that the Landlord posted non-smoking signs all over the building. However, that did not deter the smokers. The Tenants' witness testified that he had seen the superintendent's wife smoke in the hallway by the window several times in the winter when it was very cold outside. He did not recall the dates, but it was around 6:00 p.m. when he and his wife were going for a walk. The superintendent denied the accusations. His evidence was that they usually have supper around 6:00 p.m. therefore his wife would not have been smoking at the time. The superintendent acknowledged that people smoke in the

common hallway, however without knowing the identity of the smokers, there is not much the Landlord can do.

16. It is the Tenants' burden of proof to establish that the Landlord substantially interfered with their reasonable enjoyment of the rental unit by failing to address the smoking in the common hallway. I am not satisfied that the Tenants met the burden of proof in this instance. As such, I am not satisfied that the Landlord substantially interfered with their reasonable enjoyment of the premises.

The door:

17. The front door has not been working properly and was noisy. The Landlord had the door repaired when he was advised of the problem. There was a slight delay in repairing the door because a part had to be ordered. While the door was in disrepair, the Landlord posted a notice asking the Tenants to use the back door.
18. I am not satisfied that this inconvenience meets the threshold of serious interference with the reasonable enjoyment of the premises.

Renting to problematic tenants:

19. The Tenant testified that the Landlord rents rental units to problematic people. The police attended at the residential complex several times. The evidence before me established that the Landlord took steps to evict the problematic tenants, who were disturbing other residents, and did so in a timely fashion despite the lack of cooperation from the other residents. The superintendent, in fact, helped one the problematic tenants to move out in order to expedite her vacating the residential complex.
20. I am not satisfied that the Landlord substantially interfered with Tenants reasonable enjoyment of the premises in this instance.

Broken windows:

21. The Tenant submitted that there were broken windows in the rental units in the residential complex. The evidence before me was that a window was broken because a tenant did not have his keys, so he kicked in the window to his rental unit in order to access the unit. He was subsequently evicted. The window was replaced. Another tenant also had a broken window and she had promised to have it fixed. She had not done so within a reasonable time frame and the Landlord had the window repaired. I am not satisfied that these two instances do not meet the threshold of substantial interference with the reasonable enjoyment of the premises by the Tenants.

Mice:

22. The Tenants had mice in the rental unit for about two weeks. When the Tenant advised the superintendent of the mice, the superintendent provided the Tenant with mouse traps and mice poison. The Tenant himself caught 6 mice. There have been no more mice thereafter. I find that the Landlord response was reasonable in the circumstances and, as

such, I am not satisfied that the Tenants met the threshold of proving that the Landlord substantially interfered with their reasonable enjoyment of the premises.

**It is ordered that:**

1. The Tenants' application is dismissed.

**January 19, 2012**

**Date Issued**

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Jana Rozehnal

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.