

Order under Section 31
Residential Tenancies Act, 2006

File Number: TST-25542-12

M.N. and T.C. (the 'Tenants') applied for an order determining that Z.G. (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.

H.S.O. has been removed as a party to this application.

This application was heard in Toronto on May 9, 2012. The Tenants and the Landlord attended the hearing.

Witness:

L.J. gave evidence for the Landlord

Evidence:

1. The Tenants gave the following evidence. They moved into the rental unit on February 1, 2011. The very day they moved in there was an excessive amount of noise from the lower unit. The noise was connected to loud music and specifically the bass in the music. They went to the other unit and spoke to the tenant and asked if he could please keep the volume of the music down as it was too loud. He advised them it's not too loud and he wasn't turning it down. They didn't want to cause problems on the first day so they let the situation pass. The noise continued into the tenancy and they again attempted to resolve the issue by speaking with the other tenant, without success. They eventually e-mailed the Landlord about the situation in late February 2011. The Landlord showed this e-mail to the other tenant and the situation worsened. Now the music was louder and he was banging on the ceiling of his unit. They again spoke to the Landlord but nothing changed. On March 20, 2011 they sent another e-mail to the Landlord about the issue. He advised them to call the Police and then provide him with copies of the Police reports. For the next several months every time the music was loud they would call the Landlord and ask him to come and listen. He always refused. They did call the Police on several occasions and the offending tenant has been charged by the Police with four offences of making excessive noise. In March 2012, after they provided the Landlord with copies of the Police reports the Landlord finally came and listened. He agreed the music was too loud and went to speak to the other tenant. After that complaint the noise got even worse. They again contacted the Landlord and nothing was done until April 19, 2012. Since that complaint there have not been any incidents of excessive noise.
2. During the tenancy the Tenants have also complained to the Landlord about smoke in the residential complex. They claim that the other tenant and his guests smoke inside despite a clause in the lease that states the complex is supposed to be non-smoking. This situation has never been addressed by the Landlord and has been on going since the day

the tenancy commenced. They have written letters to the Landlord and verbally advised the Landlord of this situation.

3. The Landlord gave the following evidence. He agreed that the Tenants have complained to him about the loud music. He spoke to the other tenant about the noise and was advised the music is never loud. He asked the Tenants to keep a record of the incidents and to call the Police. He also asked them to provide him with proof of the noise and they never did. Eventually he grew tired of the complaints so he decided to go to the complex and listen. He agrees he heard loud music and he spoke to the other tenant. As a result of that complaint he issued a letter to the tenant telling him that unless he stopped the excessive noise he had to move out. He found out that the letter he gave to the tenant wouldn't address the situation so he issued the other tenant an N5 Notice of Termination on April 19, 2012. Since he issued that N5 there have been no further complaints.
4. He has spoken to the other tenant about the smoking issue and he has been told the other tenant does not smoke at all and he will not let his guests smoke in the unit. He has never been provided any proof that the tenant or his guests are smoking in the unit. When he did speak to the other tenant he was advised it was the Tenants who were smoking inside the complex not him.
5. The Landlord also attempted to raise issues claiming the Tenants moved somebody else into the unit without his permission and that the person they moved in was causing problems. The Landlord was advised this is not relevant to the issues being addressed at the hearing and if he felt the Tenants have done something in violation of the *Residential Tenancies Act, 2006*, he should file an application to deal with that situation. The Landlord had to be reminded several times to stick to the issues contained in the application. At one point he asked "*are you refusing to hear my evidence?*". He was advised that I would hear all relevant evidence but that I didn't need to hear about claims the Tenants have done something wrong as that is not relevant to the issue at hand.
6. L.J. gave the following evidence for the Landlord. He moved into the complex before the Tenants moved in upstairs. They did come to him the day they moved in complaining about the loud music and he did tell them it wasn't loud so he wasn't turning it down. He has been charged four times by the Police with regards to excessive noise in the unit, but he is fighting those charges. The Landlord did give him a letter on March 2012 and he signed that letter but he had no idea what the letter said as he didn't read it before he signed it. The next day he did read it and told the Landlord the letter meant nothing as it wasn't the proper form. Within a week the Landlord served him with the N5 and he hasn't made any noise since then. He stated that he does not smoke at all and he does not allow other people to smoke in his unit.

Determinations/reasons:

1. Based on the evidence provided and on a balance of probabilities I find that 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. The Tenants complained to the Landlord from day one of the tenancy and it wasn't until over a year later the Landlord served the offending tenant with any type of documentation that the noise must stop.

Even when he did serve a document it was a letter that had no legal recourse. After he served that letter and he found it was useless he waited another month before serving the proper form. The Landlord has an obligation to take all the required steps to remedy the situation as quickly as possible. In this matter the Landlord avoided the issue until he was forced to take the required legal steps. If he had taken the appropriate steps from the beginning there wouldn't have been an issue.

2. There is no doubt there has been excessive noise. The fact that the offending tenant has been charged four times tells me that he just doesn't care about the issue. It wasn't until more than a year after the complaints started and the Landlord served him with a valid notice of termination that he became concerned. The evidence provided by the witness is not consistent with what actually happened. He stated that the first letter was given on March 12, 2012 and the N5 was given within a week after that. However, the documents show the letter was issued on March 12, 2012 and the N5 wasn't issued until April 19, 2012 some five weeks later. This gives me some concerns with the credibility of the witness.
3. The Tenants have not convinced me that there is an issue with smoking. There was no evidence provided that the other tenant smokes or that they have seen his guests smoking in the complex. There will be no award for this issue.
4. The reasons contained in this order constitute all of the reasons used to make my decision.

It is ordered that:

1. The Landlord shall pay to the Tenants a rent abatement of \$1,620.00. This amount is based on ten percent of the monthly rent (\$1,350.00) for a period of twelve months. The Tenants complained in February 2011 and the situation wasn't corrected for over a year.
2. The total amount the Landlord owes is \$1,620.00.
3. The Landlord shall pay the Tenants the full amount owing by May 31, 2012.
4. If the Landlord does not pay the Tenants the full amount owing by May 31, 2012, he will owe interest. This will be simple interest calculated from June 1, 2012 at 3.00% annually on the balance outstanding.
5. If the Landlord does not pay the Tenants the full amount owing by May 31, 2012, the Tenants may recover this amount by deducting \$810.00 from the rent in June 2012 and \$810.00 from the rent in July 2012.
6. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

May 10, 2012

Date Issued

William Burke
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.