

Order under Section 69
Residential Tenancies Act, 2006

File Number: NOL-23023-16

DTSSAB (the 'Landlord') applied for an order to terminate the tenancy and evict YB (the 'Tenant') because the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant.

This application was heard by telephone on March 21, 2016.

The Landlord's agent, LL, and the Tenant attended the hearing.

Also attending to give evidence for the Landlord were KB housing manager, NC maintenance clerk, ML, and EB.

Determinations:

1. The Tenant has lived in the residential complex for approximately nine years. Until July 1, 2014 she occupied a unit on the second floor. The Tenant suffers from a physical disability and requested to relocate to a unit on the main floor.
2. Prior to 2014 the Landlord, a public housing provider, implemented a program to convert all residential complexes under their supervision to non-smoking. This policy recognizes the health risks of smoking and second smoke. Accordingly after this date all new tenancy agreements include a Schedule "C" Smoking Policy and Agreement. This document provides that tenants are not permitted to smoke in the residential complex, the rental unit, on balconies, patios and within a distance of five (5) meters from any window or entrance or exit. This prohibition includes the tenant's guests.
3. The policy document acknowledges that the Landlord's complexes are not entirely smoke free as there are tenants occupying units prior to the implementation of the policy who are permitted to continue to smoke in their rental units.
4. Until July 1, 2014 the Tenant was permitted to smoke in her rental unit because her tenancy pre-dated the implementation of the non-smoking policy. Upon relocating to a different rental unit and entering into a new tenancy agreement the Tenant became subject to the non-smoking policy. The Tenant does not appreciate that when she relocated the legal consequence was to create a new tenancy in a new rental unit. The fact that she has lived in the complex for nine years does not change this fact.
5. The Tenant denied that she executed the Schedule "C" which is part of her tenancy agreement and stated only that the signature on the document is a forgery by the Landlord. The Tenant provided no evidence to support this allegation and an examination of the signature on the document in question shows that it is the same as the Tenant's signature on the tenancy agreement. The Tenant offered no reasonable explanation why the Landlord would forge her signature or why the Landlord would not require her to comply with the mandated non-smoking policy.

6. LL testified that when the Tenant requested to transfer units she personally spoke to the Tenant to ensure she understood that if she relocated she would not be able to smoke in her new unit. Prior to signing the lease with the attached schedule on June 4, 2014 the Landlord sent a letter to the Tenant dated May 30, 2014. In this letter offered the new rental unit and included information about the non-smoking policy and that it must be signed when the lease is signed. The Tenant could not recall if she got this letter.
7. LL stated the Tenant understood the requirements about non-smoking but within weeks of moving to the main floor unit there was evidence that she was smoking in her rental unit. Various employees of the Landlord observed the smell of cigarette smoke at her unit.
8. A warning letter was sent to the Tenant in September, 2014 followed by on November 11, 2014 the Landlord served a *Notice to Terminate a Tenancy Early* (Form N5) regarding the Tenant's smoking in the rental unit.
9. In a letter to the Tenant dated November 19, 2014 the observations of the Landlord's staff about smoking in the unit is set out. The letter also confirms discussions with the Tenant who advised that she was cutting down her smoking and trying to smoke on her patio. The Landlord did not pursue eviction proceeding at this time because the Tenant agreed to a referral to the Timiskaming Health Unit and their smoking cessation programs.
10. The Tenant continued to smoke in the rental and it worsened in 2015. KB testified that she is in the complex every second week and smelled cigarette smoke in the hall outside the rental unit. In October NC and ML inspected the unit and noted a heavy odour of smoke in the hallway, observed a visible haze of smoke and odour in the unit and a dirty ashtray. They asked the Tenant about her smoking which was not denied.
11. The Tenant disputed that anyone had been in her unit, denied knowing NC, and accused all the Landlord's employees of deception and improper behaviour. The Tenant questioned the Board's decision to even accept the Landlord's application in this matter.
12. KB and LL both testified that they have spoken to the Tenant about her smoking and that she must cease.
13. The Landlord served a new first *Notice to Terminate a Tenancy Early* (Form N5) on January 27, 2016 regarding the Tenant's smoking in the rental unit contrary to the non-smoking policy. This notice provided the Tenant with seven days to correct her conduct in accordance with Section 64 of the *Residential Tenancies Act, 2006* (the 'Act').
14. KB attended the rental unit at the end of the seven day void period and the Tenant had not ceased smoking. Accordingly because the notice was not voided the Landlord was entitled to file the application for termination of the tenancy.
15. The Tenant's response to this application was that she did not sign the non-smoking policy document and she is entitled to smoke in the rental unit because she was entitled to smoke in her previous unit. The Tenant does not deny that she smokes in the rental

unit but stated she only smokes eight cigarettes a day. The Tenant does not intend to abide by the non-smoking policy.

16. The Tenant's smoking in the rental unit is contrary to the Landlord's policy and her express agreement to not smoke. The Tenant's behaviour substantially interferes with the reasonable enjoyment of the residential complex by the Landlord and other tenants and the Landlord's lawful right to create and maintain a smoke free environment.
17. I have considered all of the disclosed circumstances, including the Tenant's adamant refusal to comply with the non-smoking policy, in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated, as of April 4, 2016. The Tenant must move out of the rental unit on or before April 4, 2016.
2. If the unit is not vacated on or before April 4, 2016, then starting April 5, 2016, 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 April 5, 2016.
4. The Tenant shall pay to the Landlord \$170.00 for the cost of the application.
5. If the Tenant does not pay the Landlord the full amount owing by April 4, 2016 the Tenant will owe interest. This will be simple interest calculated from April 5, 2016 at 2.00% annually on the outstanding balance.

March 24, 2016
Date Issued

Lisa Stevens
Member, Landlord and Tenant Board

Northern-RO
199 Larch Street, Provincial Building, Suite 301
Sudbury ON P3E5P9

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

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on October 5, 2016 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.

