

Order under Section 69
Residential Tenancies Act, 2006


File Number: EAL-73958-18-**AM**
EAL-73960-18-**AM**
EAT-73076-18-**AM**

In the matter of: 1, 26 FOXMEADOW LANE
NEPEAN ON K2G3W2

Between: Luan Nguyen

and

Brianna Birchfield
Jordan Auger

I hereby certify this is a true copy of	
<input checked="" type="checkbox"/> Order	<input type="checkbox"/> Direction
Dated: AUG 17 2018	
	
(Signature of Staff Member)	
LANDLORD AND TENANT BOARD	

Landlord

Tenants

This order amends the original order issued on July 30, 2018, which contained clerical errors. All changes to the original order are issued in underlined and bolded script.

EAL-73958-18

Luan Nguyen (the 'Landlord') applied for an order to terminate the tenancy and evict Brianna Birchfield and Jordan Auger (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe. (the 'L1 Application')

EAL-73960-18

The Landlord also applied for an order to terminate the tenancy and evict the Tenants because they, another occupant of the rental unit or someone they permitted in the residential complex have:

- substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant;
- committed an illegal act or have carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential complex involving the production of an illegal drug, the trafficking in an illegal drug or the possession of an illegal drug for the purposes of trafficking.

The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date. (the 'L2 Application')

EAT-73076-18

The Tenants applied for an order determining that Landlord failed to meet the Landlord's maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards (the 'T6 Application').

The Tenants also applied for an order determining that the Landlord entered the rental unit illegally, substantially interfered with their reasonable enjoyment of the rental unit or complex and harassed coerced, obstructed, threatened or interfered with them. (the 'T2 Application')

These applications were heard together in Ottawa on July 11, 2018.

Only the Landlord and the Landlord's Legal Representative, Kelli-Anne Day attended the hearing.

Determinations:

Background

1. The rental unit is a 2 storey unit located in a semi-detached duplex. The lawful monthly rent is \$1,500.00.
2. The tenancy started on August 15, 2017.

L1 Application

1. The Tenants have not paid the total rent the Tenants were required to pay for the period from April 1, 2018 to July 31, 2018. Because of the arrears, the Landlord served a Notice of Termination effective April 18, 2018.
2. The Landlord collected a rent deposit of \$1,500.00 from the Tenants and this deposit is still being held by the Landlord.
3. Interest on the rent deposit is owing to the Tenants for the period from August 11, 2017 to April 18, 2018.
4. I have considered all of the disclosed circumstances 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.

L2 Application

5. On March 28, 2018, the Landlord provided the Tenants with a Notice to End your Tenancy For Interfering with Others, Damage or Overcrowding (Form N-5). The Form N-5 alleges that the Tenants were smoking marijuana in the rental unit and that this was interfering with the other occupants of the rental complex.
6. Also on March 28, 2018, the Landlord served the Tenants with a Notice to End your Tenancy For Illegal Acts or Misrepresenting Income in a Rent-Geared-to-Income Rental Unit (Form N-6). The Form N-6 essentially alleges the same thing as the Form N-5 namely that the Tenants were smoking marijuana in the rental unit.

7. The Landlord and his wife, Nga Du, testified at the hearing that while they were unable to enter in the rental unit they were able to smell marijuana smoke from the basement unit and from outside the rental unit.
8. The Landlord also presented several communications exchanged with the other tenants from the basement unit. On or around April 1, 2018, one of these tenants sent an email complaining about the smell of marijuana smoke. Based on this evidence, I find that the Tenants failed to void the Form N-5 by smoking or allowing an occupant to smoke marijuana in the rental unit during the seven day voiding period following the service of the Form N-5 on March 28, 2018.
9. Based on the uncontested evidence presented during the hearing by the Landlord and his wife, I find that the Tenants have substantially interfered with the reasonable enjoyment of the rental complex of the other tenants.
10. With regards to the Form N-6, the Tenants' conduct is not enough to substantiate an eviction based on carrying on an illegal act. While the police were called by the Landlord to rental unit, no criminal charges were laid. The Landlord did not provide enough evidence to support the claim of illegal Acts. No remedy shall flow from the Form N6.

EAT-73016-18

11. Since the Tenants did not appear at the hearing to support their application, I find that this application has been abandoned and must be dismissed.

It is ordered that:

1. Application EAT-73016-18 is dismissed.
2. The tenancy between the Landlord and the Tenants is terminated, as of July 30, 2018. The Tenants must move out of the rental unit on or before August 10, 2018.
3. **The Tenants shall pay to the Landlord \$4,449.06, which represents the amount of rent owing and compensation up to July 30, 2018, less the rent deposit and interest the Landlord owes on the rent deposit.**
4. The Tenants shall also pay to the Landlord \$49.32 per day for compensation for the use of the unit from July 31, 2018 to the date they move out of the unit.
5. The Tenants shall also pay to the Landlord \$175.00 for the cost of filing the application.
6. If the Tenants do not pay the Landlord the full amount owing on or before August 10, 2018, they will start to owe interest. This will be simple interest calculated from August 11, 2018 at 3.00% annually on the balance outstanding.

7. If the unit is not vacated on or before August 10, 2018, then starting August 11, 2018, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
8. 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 August 11, 2018. The Sheriff is requested to expedite the enforcement of this order.

August 17, 2018

Date Amended



Émilie Moniz
Member, Landlord and Tenant Board

Eastern-RO
255 Albert Street, 4th Floor
Ottawa ON K1P6A9

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 expires on February 11, 2019 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.