



Order under Section 69
Residential Tenancies Act, 2006

File Number: TNL-32974-21

In the matter of: MAIN FLOOR, 355 SIMCOE STREET
NEWMARKET ON L3Y2M2

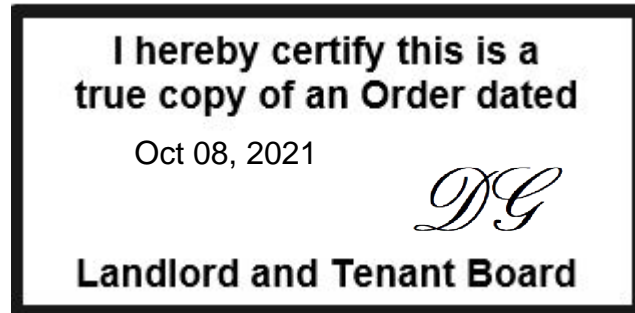
Between: Dayna Vitale
Domenico Vitale

Landlords

and

Ashley Squires
Christian Dewan

Tenants



Dayna Vitale and Domenico Vitale (the 'Landlords') applied for an order to terminate the tenancy and evict Ashley Squires and Christian Dewan (the 'Tenants') because they, another occupant of the rental unit or someone they permitted in the residential complex have wilfully or negligently caused undue damage to the premises; and 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 Landlords or another tenant. This is the N5 notice of termination. The Landlords have also applied for an order requiring the Tenants to compensate the Landlords for the damage.

The Landlords also applied 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 wilfully caused undue damage to the premises; used the rental unit or the residential complex in a manner that is inconsistent with use as a residential premises and that has caused or can be expected to cause significant damage; and because they, another occupant of the rental unit or a person the Tenants permitted in the residential complex have seriously impaired the safety of any person. This is the N7 notice of termination.

The Landlords also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard via videoconference on October 1, 2021. Only the Landlord, Domenico Vitale (DV), and the Tenant, Ashley Squires (AS), attended the hearing. AS stated she was not appearing on behalf of the Tenant, Christian Dewan (CD). CD was not present or represented although properly served with notice of this hearing by the Board. AS had an opportunity to speak with Tenant Duty Counsel before the hearing.

Determinations:

1. The Landlords applied to terminate the tenancy pursuant to an N5 and N7 notice served on the Tenants on June 6, 2021. The events in the notices pertain to the same incidents.
2. DV testified that on June 1, 2021, CD was charged with assault against AS. In the course of the assault, CD caused property damage to the unit. After the assault on AS, on June 2, 2021 to June 3, 2021, CD barricaded himself in the unit and posted on social media that he wanted to die by "suicide by cop" and that he was in possession of weapons. The York Regional Police Emergency Response Unit attended the unit and the other tenants of the residential complex were evacuated. The police made attempts to have CD open the door voluntarily. CD refused to open the door and as such, the police broke the rear door and window and front door to enter. Submitted into evidence was the Release Order and Conditions of CD.
3. AS did not dispute the events as described by DV. She testified that she was at her mother's house after the assault and the police were on the phone with her during the stand-off. AS testified that CD barricaded the unit with Christmas boxes. She heard the police give four warnings to CD to open the door before they broke the doors. CD was detained shortly after he was apprehended.

LAW AND ANALYSIS

N7 Notice

4. Pursuant to section 66 of the Act, a landlord may give a tenant a notice of termination if an act or omission of the tenant seriously impairs the safety of another person, provided that the act or omission complained of occurs in the residential complex.
5. In order to be successful on this ground, the Landlord must establish that the effect of the Tenant's actions threatens the wellbeing or physical integrity of another person to such a degree that termination of the tenancy is reasonable in order to ensure the safety of others. In other words, the question to be answered is whether a tenant's actions put someone at serious risk of physical harm. Not every risk of physical harm to another will meet the test, as the impairment of safety must be serious.
6. Based on the uncontested evidence of DV, and corroborating evidence of AS, I find that CD's conduct, in assaulting AS, being in possession of weapons, and causing a police stand-off in his unit, seriously impaired the safety of another person. I am satisfied, on a balance of probabilities, that the Tenant engaged in the conduct as detailed in the N7 notice of termination and, as such, has seriously impaired the safety of another person in the residential complex.
7. Regarding the Landlord's claim that the Tenants had used the unit in a way that is inconsistent with its use as a residential premises, I find that in CD rendering the entries into the unit inoperable such that the police were unable to effect their duties meets this threshold. The use of the unit in this manner was likely to cause serious damage.

N5 Notice

Substantial Interference

8. The Landlord claimed that the Tenant substantially interfered with another Tenant's or the Landlord's reasonable enjoyment and/or lawful rights, privileges or interests. I find that the Tenant's conduct, in assaulting AS and requiring other tenants to evacuate during the stand-off, constitutes substantial interference. However, the Landlord lead no evidence that the Tenant engaged in the conduct outlined in the N5 within seven days from the date the notice was served. As such, I find the Tenant voided this portion of the N5.

Damages

9. The Landlord alleged that the Tenant wilfully or negligently caused damaged pursuant to the N5 and N7 notices. In order to be successful in the damages claim, the Landlord, as the applicant, must establish all of the elements of sections 62 or 63 and 89 of the Act. It must be established that a tenant, an occupant of the rental unit or a person the tenant permitted in the complex negligently or willfully caused undue damage to the rental unit or complex.
10. Here it was the police, not the Tenant, an occupant or a person permitted in the unit by the Tenant, who caused the damage. In other cases before this Board involving damages to a rental unit as a result of police conduct, it has been found the Tenant is not responsible for the actions of the police in carrying out their responsibilities.¹ However, the facts before me are distinguishable.
11. The Landlord's evidence is persuasive that the rental unit doors were damaged because the police were dispatched to the unit after there were concerns about CD's possession of weapons, threats to safety of the other tenants of the residential complex and threats of harm. I accept DV and AS's testimony that the police gave CD an opportunity to open the door by requesting entry into the unit on four occasions to try and gain access to the unit without force. Further, I also accept AS's testimony that CD physically blocked police entry by placing boxes in front of the door.
12. I find it reasonable, based upon my interpretation of section 62, 63 and subsection 89(1) of the Act, to conclude that the Tenant wilfully or negligently caused damage as it should have reasonably been within the Tenant's contemplation that damages would occur as a result of him barricading the doors and denying access.
13. I find that the Tenant wilfully or negligently caused damage to the unit as it should have been within the Tenant's contemplation that damages would occur as a result of barricading the doors. The Landlord therefore had the right to apply to the Board for an order evicting the Tenant.

¹ See TSL-22156 (Re), 2009 CanLII 51180 (ON LTB) and also TSL-12919-11 (Re), 2011 CanLII 50660 (ON LTB)

14. Having established, on a balance of probabilities, that the Tenant's barricading of the door when police were trying to enter for an emergency purpose resulted in the damage, I find it appropriate to terminate the tenancy and to award damages to the Landlord.
15. The Landlord submitted into evidence two invoices from New City Glass & Windows dated June 5, 2021 for the rear sliding door and glass, screen, and the rear window master bedroom screen, new steel front door, new lock, new storm door chain, repair broken wooden frame and repainting the door frame. The total amount identified in the invoices was \$3,616.00.
16. The Landlord also submitted that he had to pay an additional \$2,500.00 for temporary replacements for rear sliding doors. The Landlord submitted he had a receipt for this cost, but he could not locate it for these proceedings. While I find there were damages to the rear sliding doors, in the absence of any documentary evidence such as a receipt, there is insufficient evidence that a temporary replacement amounted to \$2,500.00. As a result, I find that the Landlord is not entitled to this amount.
17. There was an additional \$1,300.00 paid to the Landlord's son to clean the unit of broken glass and broken boxes and clean the pepper spray. It took his son 3-4 days to clean the unit. DV testified that he had contacted a cleaning company called Clean All who quoted that it would cost \$2,000.00 to clean the unit and another company that said they would charge \$1,300.00 to clean the unit but was only available to clean the following week. I am satisfied that the cleaning of the unit had to be performed consequent of the Tenant's damages to the unit. As such, the cost of cleaning is required in relation to the repairs in the unit. I find that this cost is reasonable under the circumstances and the Landlord is entitled to this amount.

Section 83 Relief from Eviction

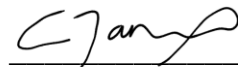
18. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. AS did not dispute that this tenancy should be terminated. CD did not attend to disclose any circumstances to make a finding that relief from eviction is warranted. The Landlord was not aware of any of CD's circumstances. The Landlord testified that after the police attended the unit, CD was required to not attend the unit or have contact with AS pursuant to his release conditions. However, two to three weeks prior to the hearing, CD attended the unit intoxicated, thus breaching his release conditions. I find the prejudice to other occupants, specifically for AS, to be such that it would be unfair to grant relief from eviction.

It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated, as of October 13, 2021. The Tenants must move out of the rental unit on or before October 13, 2021.
2. The Tenants shall pay to the Landlords \$4,916.00, which represents the reasonable costs of repairing the damage and replacing the damaged property.

3. The Tenants shall pay to the Landlords \$3,650.57, which represents compensation for the use of the unit from July 1, 2021 to October 8, 2021, less the rent deposit and interest the Landlords owe on the rent deposit (and less any rent paid by the Tenants from July 1, 2021 to October 8, 2021).
4. The Tenants shall also pay to the Landlords \$53.42 per day for compensation for the use of the unit from October 9, 2021 to the date they move out of the unit.
5. The Tenants shall also pay to the Landlords \$186.00 for the cost of filing the application.
6. If the Tenants do not pay the Landlords the full amount owing on or before October 13, 2021, they will start to owe interest. This will be simple interest calculated from October 14, 2021 at 2.00% annually on the balance outstanding.
7. If the unit is not vacated on or before October 13, 2021, then starting October 14, 2021, the Landlords 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 Landlords on or after October 14, 2021. The Sheriff is requested to expedite the enforcement of this order.

October 8, 2021
Date Issued



Camille Tancioco
Member, Landlord and Tenant Board

Toronto North-RO
47 Sheppard Avenue East, Suite 700, 7th Floor
Toronto ON M2N5X5

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 April 14, 2022 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.