

Order under Section 69
Residential Tenancies Act, 2006

File Number: TSL-93538-18

S.B.M and L.B.M (the 'Landlords') applied for an order to terminate the tenancy and evict S.F (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. (N5 notice)

The Landlords also applied for an order to terminate the tenancy and evict the Tenant because the Tenant or another occupant of the rental unit committed an illegal act or carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential. (N6 notice)

The Landlords also applied for an order to terminate the tenancy and evict the Tenant because the Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person and wilfully or negligently caused undue damage to the premises. (N7 notice)

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

This L2 application was heard in Toronto on August 14, 2018.

The Landlord, L.B.M, and the Landlords' legal representative, G.B, and the Tenant and the Tenant's legal representative, S. A.G, attended the hearing.

Preliminary Issue:

1. The Tenant made a preliminary motion to dismiss the Landlords' application.
2. It is the Tenant's position that because of confusion resulting from the Landlords having served the Tenant with N5 and N6 and N7 notices at the same time with the same termination date claiming in all three the same two reasons for ending the tenancy and evicting the Tenant, namely, for having removed the baseboard heaters and for fire code violations.
3. It is undisputed that an additional allegation in the N5 notice (not made part of the N6 and N7) regarding the Tenant obstructing access to the parking lot was corrected by the Tenant within the 7 day period following the service of the N5 notice. Therefore the allegation in N5 respecting parking has been voided in accordance with section 64(3) of the *Residential Tenancies Act, 2006 (Act)*.
4. The only other issue in the N5 that is also not included in the N6 and N7 is the allegation that the Tenant interfered with the Landlords' attempts to access the rental unit to perform maintenance. I find that this allegation has also been voided because it is not disputed

that the Landlord did not seek further access to the rental unit within the 7 day voiding period.

5. The parties made submissions with respect to the only issue in dispute, namely, whether serving the N5 and N6 and N7 simultaneously with respect to the same impugned conduct and with the same termination date is confusing such that the application should be dismissed.

Tenant's submission with respect to confusion

6. It is submitted that notwithstanding the impugned conduct is common to all three notices only the N5 notice provides that in order to avoid eviction the Tenant has 7 days to stop the activities or correct the behaviour complained of and repair the damaged property by paying the Landlords \$1,638.50. The N6 and N7 notices do not permit the Tenant to avoid eviction by stopping the complained of activities and paying for repairs within 7 days. In other words, simultaneously, the Tenant is being told he can and cannot avoid eviction for the same impugned conduct.
7. The Tenant relies on the decision in file number SWL-42630-12 in which the Vice-Chair denied the landlord's request for termination under the L2 application because the notices given to the tenant lacked detail and "service of two different notices in respect of the same issue, one voidable and one not, is sufficiently confusing that the [t]enant would reasonably have been confused by receipt of those multiple notices."

Landlords' submission with respect to confusion

8. The Landlords submit that although there is conduct complained about in the N5 that is also the subject of the same complaints in the N6 and N7, the remedies sought are not. For instance, in the N5 the Landlord asks for payment of \$1,638.50 which is the cost to reinstall baseboard heaters.
9. The Landlords also submit that they are simply applying the rules and regulations of the Board by submitting three separate notices for eviction with the same termination date.
10. As well, the Landlords say the decision in file number SWL-42630-12 turned on the failure to provide adequate details rather than on confusion created by service of voidable and void notices for the same conduct.

Analysis

11. Neither party directed me to any relevant decision other than that contained in file number SWL-42630-12. While it is true that in that order the Vice-Chair found fault with the lack of details in the notices given to the landlord, it is also clear from the passage quoted above that the service of two different notices in respect of the same issue, one voidable and one not, was a reason for her decision to dismiss the application.

12. Undoubtedly, a landlord is entitled to serve more than one notice of termination respecting the same conduct or event. Indeed, the Board's Interpretation Guideline #10 states in part:

Sometimes the same event may give rise to more than one ground for termination, as a result the landlord may serve more than one Notice of Termination citing the same event as the reason for both of the Notices....

Although the landlord is permitted to give Notices of Termination with different termination dates, confusion to the tenant should be minimized. The Notices may be challenged on the basis that they are confusing and therefore defective. In the worst case, an application may be dismissed.

13. However, as suggested in the Guideline, this does not mean a landlord can do so in a way that causes confusion. That is exactly what has occurred in the present case where the Tenant is being told he can and cannot avoid eviction for the same impugned conduct. This contradictory direction would likely confuse any reasonable tenant.
14. Further, I cannot see how it makes any difference in what way the Tenant is able to void the N5 notice, such as paying for the repairs within the 7-day period, when that notice is being compared with the N6 and N7 notices with respect to whether the combination of all three when served together creates confusion.
15. For these reasons I find the combination of voidable and non-voidable notices served on the Tenant for the same alleged conduct is confusing and causes all the notices before me to be defective. I cannot consider the Landlord's application to terminate the tenancy in the absence of valid notices of termination.
16. The continuation of this hearing scheduled for November 2, 2018 is cancelled.

It is ordered that:

1. The application is dismissed.

August 23, 2018
Date Issued

David Mungovan
Member, Landlord and Tenant Board

Toronto South-RO
79 St. Clair Avenue East, Suite 212, 2nd Floor
Toronto ON M4T1M6

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