



Order under Section 68
Residential Tenancies Act, 2006

File Number: TNL-26238-20

In the matter of: 609, 215 GOSFORD BOULEVARD
TORONTO ON M3N2W2

Between: 1351895 Ontario Ltd O/a Elmpark Manor Landlord

and

Ross Hamilton Tenant

1351895 Ontario Ltd O/a Elmpark Manor (the 'Landlord') applied for an order to terminate the tenancy and evict Ross Hamilton (the 'Tenant') because the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused undue damage to the premises. The Landlord has also applied for an order requiring the Tenant to compensate the Landlord for the damage; and 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 videoconference on October 14, 2021. The Landlord was represented by David Strashin. The Tenant was represented by Hanson Sone.

Determinations:

1. This application is based on a nonvoidable Notice of Termination (form 'N5') served on the Tenant on May 5, 2020 with a termination date of May 30, 2020 because a person permitted in the residential complex by the Tenant has substantially interfered with the reasonable enjoyment or lawful rights, privileges or interests of the Landlord or another tenant by causing a disturbance at the rental office.
2. The application was filed pursuant to s. 68 of the *Residential Tenancies Act*, 2006 (the 'Act') which states:
 - (1) A landlord may give a tenant notice of termination of the tenancy if,
 - (a) a notice of termination was given to the tenant under section 62, 64 or 67; and
 - (b) more than seven days but less than six months after the notice mentioned in clause (a) was given to the tenant, an activity takes place, conduct occurs or

a situation arises that constitutes grounds for a notice of termination under section 60, 61, 62, 64 or 67, other than an activity, conduct or a situation that is described in a subsection 61(1) and that involves an illegal act, trade, business or occupation described in clause 61(2)(a).

3. In this case the Tenant was served the first notice of termination N5 at 9 a.m. on May 5, 2020, according to the Certificate of Service filed with the application. The second N5 was served on the Tenant at 3:03 p.m. of May 5, 2020, according to the Certificate of Service. The application was filed May 6, 2020. Both notices relate to the behaviour of the Tenant's guest, James Yong. The Tenant was not afforded the opportunity to void the first notice as required by s. 70 of the Act which says "A landlord may not apply to the Board for an order terminating a tenancy and evicting the tenant based on a notice of termination under sec. 62, 62 or 67 before the seven-day remedy period specified in the notice expires." In this case the voiding period of the first notice is May 6, 2020 to May 12, 2020.
4. Notwithstanding my comments made at the hearing, the application is dismissed because the Landlord did not have a right to file the application during the voiding period afforded by the original Notice of Termination as required by s. 70.

It is ordered that:

1. The application is dismissed.

January 4, 2022
Date Issued



Dawn King
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.