



Order under Section 69
Residential Tenancies Act, 2006

File Number: TSL-21672-21

In the matter of: 2904, 24 MABELLE AVENUE
TORONTO ON M9A4X8

Between: Wilstar Management Ltd. Landlord

and

Yash Patel Tenant

Wilstar Management Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Yash Patel (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. The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on August 3, 2021. The Landlord was represented by the Property Manager, Ryan Gibson, and by their Legal Representative, David Rubin. The Tenant attended and was legally represented by Shibil Siddiqi.

George Ancuta attended as a witness for the Landlord
Neil Patel attended as a witness for the Tenant.

Determinations:

1. This application is based on a non-voidable Notice of Termination (N7) alleging that the behaviour of the Tenant or someone visiting or living with the Tenant has seriously impaired the safety of another person and this behaviour occurred in the residential complex. The allegation is the Tenant's guest threw garbage down a garbage chute which had been closed off by the Landlord for repair, and that this garbage missed hitting a contractor who was doing the repairs at the bottom of garbage chute. The N7 had a termination date of May 17, 2021, and was served on the Tenant on April 24, 2021 by sliding it under the Tenant's door.
2. RG is the Property Manager of the 34 floor, 540-unit building, responsible for the day to day operations including maintenance and repairs. RG gave oral testimony that the garbage chute was closed to all tenants, on all floors, while work was being completed in the compactor room, where the garbage chute ended.

3. Tenants were notified, in advance of the closure, by an email blast on April 14, 2021 through the tenant portal, by posting signage on the communal bulletin board in the lobby, and by placing signs on the access door of each garbage chute. In addition to the signage, the door to garbage chute was screwed shut at the doorknob.
4. RG introduced a video taken by security camera on the 29th floor. A male, later identified as the Tenant's guest Neil Patel, is observed leaving apartment 2904, carrying three small bags and walking to the garbage chute, removing the screw, entering the garbage chute room, then exiting and replacing screw.
5. GA testified he was working in the compactor room. His work included doing drywall in the compactor room. The work required him to be directly beside and under the garbage chute. When the bags of garbage came down the chute, GA indicated he had just moved from working inside the actual garbage chute "2 minutes" prior. GA also testified he had worked in the compactor room for 4 to 5 days, and this was the only instance when garbage came down the chute.
6. GA identified the garbage which fell to the compactor room from two photos, and it appears to be the same bags NP carried to the chute room from the Tenant's apartment.
7. Although the TTR sought to take issue the colour, font size, wording, language and graphics contained in the posted notices, I am satisfied the notices clearly communicated the closure of the garbage chutes to the tenants. .
8. There was discussion about the contents of the garbage bags, specifically whether or not a glass bottle was part of the garbage, but I am not concerned by this. Whether or not the bags contained something that might hurt someone, in the absence of the suggestion something was placed there deliberately to cause harm, the contents of the garbage are not the issue.
9. The Tenant and the Tenant's guest do not deny putting the garbage down the garbage chute. YP gave oral testimony that he does not remember receiving notice of the closure of the chute, and that, since the beginning of the pandemic, there have been "tons" of emails from the Landlord, many of which ended up in his Spam folder. Further, YP stated he enters the building through the garage and bypasses the lobby, so he did not see the notice posted on the community bulletin board. He did note he had seen other tenants using the garbage chute "recently"
10. This is not a *mens rea* issue, intent is not the test. The parties agree the garbage chute was used by NP. I am satisfied the Landlord made reasonable attempts to notify the tenants about the closure of the garbage room. I am also satisfied the Tenant was oblivious to the closure, and that he failed to let NP know before he took the garbage out.
11. The real question is whether or not the actions of NP were a "serious impairment of safety." In order to be successful on this ground, the Landlord must establish that the effect of the occupant's actions threatens the well being 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, have the occupant'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: see *TSL-76716-16* at para. 16, citing *TSL-12167-11* at para. 11.

12. Under this section the use of the word serious implies weighty, grave or momentous conduct. The conduct must have a substantial negative effect on a person's well being or the risk of same: see *NOL-08606-12* at para. 15.
13. The Tenant's guest's action placed others at risk. The act of throwing the garbage down the closed chute risked the safety of a person working below. While I appreciate the household garbage as described by the Tenant was unlikely to hurt anyone, the act itself represents a risk of serious harm and the idea that the content of the garbage, or the absence of a hard hat mitigates the risk is immaterial.

Relief from eviction

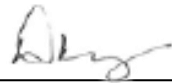
14. Both RG and YP made reference to an apology sent by the Tenant to the Landlord on April 20. I believe YP was truly remorseful about the incident and sought to convey that remorse to the Landlord.
15. At the time of the incident YP had been a tenant for 3 years. RG was not aware of any other complaints regarding the Tenant. YP expressed a wish to stay in the rental unit.
16. Having 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 not be unfair to grant relief from eviction subject to the condition(s) set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act

It is ordered that:

1. The Landlord's application to evict the Tenant is denied on the condition that for a period of twelve months from the date of issue of this order, the Tenant, persons living with the Tenant, or the Tenant's guests comply with the written notices regarding safety and security issued by the Landlord.
2. If the Tenant fails to comply with the condition of paragraph 1, then the Landlord may apply under section 78 of *the Act* for an order terminating the tenancy an eviction the Tenant. The Landlord must make the application within 30 days of the breach of condition set out in paragraph 1 of this order.
3. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.

4. If the Tenant does not pay the Landlord the full amount owing on or before December 12, 2021, the Tenant will start to owe interest. This will be simple interest calculated from December 13, 2021 at 2.00% annually on the balance outstanding.

January 5, 2022
Date Issued



Dawn King
Member, Landlord and Tenant Board

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