



Order under Section 69
Residential Tenancies Act, 2006

File Number: EAL-93730-21

In the matter of: 204, 369 DUNDAS STREET WEST
NAPANEE ON K7R2B5

Between: PELA Social Housing Landlord

and

Judy Vandusen Tenant

PELA Social Housing (the 'Landlord') applied for an order to terminate the tenancy and evict Judy Vandusen (the 'Tenant') because the Tenant or another occupant of the rental unit has committed an illegal act or has carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential complex. 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 July 28, 2021. The Landlord's Agent, T. Abrams, attended the hearing on behalf of the Landlord. Constable M. Dechenes attended a portion of the hearing as a witness for the Landlord. As of 10:41 a.m., the Tenant was not present or represented at the hearing, although properly served with notice of this hearing by the Board.

Determinations:

1. The Landlord's application is based on an N6 Notice of Termination (the 'N6 Notice'), which served upon the Tenant on December 1, 2020. The termination date in the N6 Notice is December 21, 2020. The N6 Notice alleges that the Tenant stole a television from another tenant at the residential complex on or about October 3, 2020.
2. The Tenant is in possession of the rental unit. It is a monthly tenancy. The rental unit is an apartment within a 45-unit apartment building. The units at the residential complex are rented out by the Landlord on a rent-g geared-to-income basis, and over half of the residents of the building are seniors.
3. Constable M. Dechenes ('MD') of the Ontario Provincial Police testified at the hearing in support of the Landlord's application. MD testified that the police had received a complaint from another tenant at the residential complex on October 5, 2020 that her unit had been 'broken into' and her television set had been stolen. In response, police investigated the complaint; MD was part of this investigation. MD testified that police had observed security camera footage, which revealed that the Tenant had entered the unit of

another tenant, apartment unit 122, and removed a television from that unit. Another individual, Cindy Ball, was also involved in this incident. MD testified that it was his colleague, Constable H. King, who had reviewed the camera footage and that Constable King had confirmed the details to him. MD testified that the police investigation had revealed that the Tenant had also stolen a number of other items on that day.

4. As a result of the investigation, MD testified that the police had laid charges upon the Tenant under the *Criminal Code* for break-and-enter and theft under \$5,000.00. MD also testified that the Tenant had been scheduled to appear in court regarding these charges in August 2021, which the Tenant had failed to do. As a result, a bench warrant had been issued for the Tenant's arrest.
5. MD also testified that the police had received eleven complaints about the Tenant's conduct, including allegations of theft, disturbing the peace, and drug use.
6. Based on the Landlord's uncontested evidence, I am satisfied, on a balance of probabilities, that the Tenant has committed an illegal act in the residential complex by unlawfully entering into another apartment in the residential complex and by stealing items from that apartment.
7. In order to justify a termination of the tenancy, the illegal act cannot be trivial. As stated by the Court of Appeal in *Samuel Property Management Ltd. v. Nicholson*, 2002 CanLII 45065 (ONCA), [Samuel] in para 28:

Trivial illegality does not warrant termination. CJ. put it this way in *SVCI v. B.* (1988), 1988 CanLII 4844 (ON SC), 63 O.R. (2d) 741, 49 D.L.R. (4th) 141 (Div. Ct.) at p. 745 O.R.:

Unless the offence has the potential to affect the character of the premises or to disturb the reasonable enjoyment of the landlord or other tenants, the landlord in my view does not have the right to evict.

8. I find that the Tenant's illegal entry into another apartment in the residential complex and the theft of another tenant's belongings cannot be characterized as a trivial act, as it disturbed the reasonable enjoyment of at least one other tenant in the building.
9. I have considered all of the disclosed circumstances in accordance with section 83 of the *Residential Tenancies Act, 2006*, including the impact of the COVID-19 pandemic upon the parties, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. There have been numerous complaints about the Tenant's behaviour from other residents at the residential complex and it is clear to me that this is not an isolated incident. As such, it would not be reasonable to postpone the termination of this tenancy any longer.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated, as of November 30, 2021. The Tenant must move out of the rental unit on or before November 30, 2021.

2. The Tenant shall pay to the Landlord \$4.57 per day for compensation for the use of the unit from November 20, 2021 to the date the Tenant moves out of the unit.
3. The Tenant shall also pay to the Landlord \$201.00 for the cost of filing the application.
4. If the Tenant does not pay the Landlord the full amount owing on or before November 30, 2021, the Tenant will start to owe interest. This will be simple interest calculated from December 1, 2021 at 2.00% annually on the balance outstanding.
5. If the unit is not vacated on or before November 30, 2021, then starting December 1, 2021, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. 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 December 1, 2021. The Sheriff is requested to expedite the enforcement of this order.

2021 CanLII 147170 (ON LTB)

November 19, 2021
Date Issued



Arnab Quadry
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 June 1, 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.