



Order under Section 69
Residential Tenancies Act, 2006

File Number: TSL-21562-21

In the matter of: 1205, 33 DAVISVILLE AVENUE
TORONTO ON M4S2Y9

Between: Rpms Management Landlord

and

Lalita Padathe Tenant

Rpms Management (the 'Landlord') applied for an order to terminate the tenancy and evict Lalita Padathe (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.

This application was heard by way of video conference on August 10, 2021. The Landlord's Agent, Rana Mohammad, the Landlord's Legal Representative, Kristin Ley and the Tenant attended the hearing. The Tenant spoke to Tenant Duty Counsel prior to the commencement of the hearing.

Determinations:

Preliminary Issues

1. The Tenant requested an adjournment stating she needed more time to prepare her evidence for the hearing, and she wants to get legal representation.
2. The Landlord's Representative objected to the Tenant's request for adjournment because the Tenant has had the benefit of legal advice from Tenant Duty Counsel. Also, most of the Tenant's evidence is included in the Landlord's disclosure package which is on file with the Board.
3. I denied the Tenant's request for adjournment because she did have the benefit of speaking with Tenant Duty Counsel prior to the hearing. If she wanted legal representation during the hearing, she could have reached out to the local legal clinic prior to the hearing as stated in the Notice of Hearing served to her by the Board. Further, the Tenant has had enough time to submit her evidence package prior to the hearing. Granting an adjournment based on the Tenant's reason would prejudice to the Landlord as it would be an undue delay in the resolution of this matter.

Landlord's Evidence

4. On March 25, 2021, the Landlord served the Tenant with a N5 Notice of Termination (N5 notice) with a termination date of April 14, 2021. This was the first N5 notice and the Tenant did not void it within 7 days. To void the N5 notice, the Tenant had to allow the Landlord entry into the rental unit to investigate her allegation of toxic gas and fumes inside the unit.
5. The details set out in the N5 notice claims that on February 1, 2021, February 8, 2021, March 1, 2021 and March 16, 2021, the Tenant refused the Landlord entry to the rental unit despite having been served proper notice of entry. The Landlord needed entry into the unit to investigate the serious allegations made by the Tenant that she had toxic fumes and gas entering her rental unit. Copies of the notices of entry were entered in evidence by the Landlord's Representative.
6. The rental unit is in a building containing 266 units. The Tenant's unit is a 2-bedroom apartment.
7. The Landlord's Agent testified that the Tenant has been sending him the same complaint about the toxic fumes and gas entering her apartment "over and over again". The Tenant copies and pastes the same email and sends it to him. She sometimes includes the city's medial health officer and councillor in the emails.. Copies of the emails were entered in evidence by the Landlord's Representative.
8. The Landlord's Agent testified that the allegations made by the Tenant are serious and the Landlord needs to properly address the concerns, however the Tenant refuses to allow entry to her unit, despite being given proper notice of entry.
9. The Landlord's Agent testified that since the N5 notice was served to the Tenant, she has continued to complain about the toxic fumes and gas inside her unit. The Landlord has continued to serve notices of entry to investigate the issue and the Tenant continues to deny the Landlord entry.
10. The Landlord's Agent testified that because the Tenant denies entry after notices of entry are given, the Landlord's business is negatively impacted. Each complaint and denial of entry results in lost time and scheduling issues.
11. The Landlord's Representative submitted the Landlord wants the tenancy terminated. If the tenancy is not terminated, the Landlord would like the Board to impose a conditional order requiring the Tenant to provide entry to the Landlord to investigate her concerns.

Tenant's Evidence

12. The Tenant testified that toxic fumes and gas smells inside her unit have been a problem since 2015. The Tenant testified that back in 2015, she allowed the Landlord to enter her unit to investigate the issue. At that time, the Landlord did very little and told her that there were no issues inside her unit with toxic fumes and the smell of gas. The Tenant

testified that the last time she complied with a notice of entry by the Landlord to investigate her complaint was January 7, 2020.

13. The Tenant testified that she stopped allowing the Landlord to enter her unit despite the notices of entry because she does not believe they will do anything to resolve the problem.
14. The Tenant did not dispute that she refused entry to the Landlord despite having received several notices of entry to investigate her complaints.
15. The Tenant tried to raise several unrelated issues at the hearing. I had to redirect her several times. The Tenant did not seem to understand that this is the Landlord's application and not her platform to make various complaints about the Landlord.
16. The Tenant testified that she has been living in the rental unit since 2006. She lives with her disabled 78-year old mother and does not want to move. The Tenant testified that she wants the Board to order the Landlord to fix the problem with the toxic fumes and the smell of gas inside the rental unit.

Findings

17. On a balance of probabilities, I find the Tenant has substantially interfered with the Landlord's lawful rights, privileges and interest by refusing entry to investigate her serious allegation of toxic fumes and gas inside her rental unit, despite having been given proper notice of entry. In making my finding, I considered the evidence of both parties, particularly the evidence of the Tenant confirming she denied the Landlord entry to investigate her complaint of toxic fumes and gas entering her rental unit, despite being served proper notice of entry. The Tenant's reasons for not allowing entry are not reasonable. She made the complaint to the Landlord, and the Landlord demonstrated due diligence by serving notice of entry to investigate the nature of the Tenant's complaint. The Tenant is not permitted under the Act to deny the Landlord entry if proper notice of entry was served.

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 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. While I have found the Tenant has substantially interfered with the Landlord's lawful rights, privileges, and interests, I am not convinced that eviction is the proper remedy. Having heard the evidence of both parties, I believe that a conditional order requiring the Tenant to allow entry to the Landlord is the appropriate remedy. The conditional order will resolve the Landlord's concerns of gaining entry to the rental unit to investigate the Tenant's complaints and the Tenant can remain living in the rental unit. The Landlord will also have the benefit of applying for an ex-parte eviction order under s.78 of the Act should the Tenant not comply with the conditions of the conditional order a set out below.

It is ordered that:

1. The Landlord's application to evict the Tenant is denied subject to the following conditions:
 - a) For a period of 12 consecutive months starting September 1, 2021, the Tenant shall allow the Landlord entry to the rental unit when given proper notice of entry by the Landlord.
2. If the Tenant fails to comply with any requirement set out in paragraph 1 of this order, the Landlord may apply under s.78 of the Residential Tenancies Act, 2006 within 30 days of the breach and without notice to the Tenant for an order terminating the tenancy and evicting the Tenants.
3. The Tenant shall 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 August 29, 2021, the Tenant will start to owe interest. This will be simple interest calculated from August 30, 2021 at 2.00% annually on the balance outstanding.



Dawn Wickett
Member, Landlord and Tenant Board

August 18, 2021
Date Issued

Toronto South-RO
15 Grosvenor Street, 1st Floor
Toronto ON M7A 2G6

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