



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: Madala v Kapoor, 2023 ONLTB 40361

Date: 2023-06-21

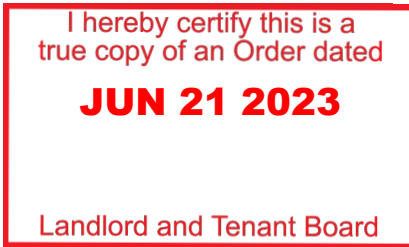
File Number: LTB-L-045926-22

In the matter of: BASEMENT ROOM 2, 92 SEWELL DR
OAKVILLE ON L6H1C5

Between: Venkata Varun Kumar Madala

And

Vijay Kapoor



Landlord

Tenant

Venkata Varun Kumar Madala (the 'Landlord') applied for an order to terminate the tenancy and evict Vijay Kapoor (the 'Tenant') because:

- the number of persons living in the unit on a continuing basis is more than permitted by health, safety or housing standards;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully caused undue damage to the premises.

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 January 26, 2023. The Landlord, Landlord's legal representative B. Lue Sang and the Tenant attended the hearing.

Determinations:

1. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy or the claim for compensation in the application. Therefore, the application is dismissed.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N5 Notice of Termination - Too Many People in the Unit

3. On July 5, 2022, the Landlord gave the Tenant a first N5 notice of termination deemed served on that date by personal service. The notice of termination alleges that the number of persons occupying the rental unit on a continuing basis contravenes health, safety, or housing standards required by law. The termination date on the N5 is July 31, 2022.
4. The residential complex is a single-family dwelling with several bedrooms on the main level and a bedroom in the basement, occupied by the Tenant. When the Tenant moved into the

unit, the complex was shared by multiple occupants who rented individual bedrooms and shared the kitchen, bathrooms and common living space.

5. The Landlord testified that property standards for the Town of Oakville has deemed the property to be operating as a Lodging House, which is a violation of the Town's property standards. The Landlord testified that he has been ordered to cease the operation of a Lodging house and for this reason, Tenant must move out of the unit.
6. The Landlord and the Tenant both testified that the Tenant is currently the sole occupant of the complex as all other occupants have vacated the property.

Analysis

7. With respect to the overcrowding allegation, the test the Board must apply is set out in section 67 of the Act:

67 (1) A landlord may give a tenant notice of termination of the tenancy if the number of persons occupying the rental unit on a continuing basis results in a contravention of health, safety or housing standards required by law.

8. The Landlord did not lead any evidence to establish that the number of persons occupying the Tenant's rental unit on a continuing basis contravenes health, safety, or housing standards required by law. The Tenant's rental unit consists of his private bedroom, where he is the sole occupant, and shared use of the kitchen, bathrooms and common living space. The Tenant is not responsible for the number of other persons the Landlord allowed to live in the building. Further, as noted above the parties agree that the Tenant is currently the sole occupant of the complex.

N7 Notice of Termination- Undue Damage

9. On August 11, 2022, the Landlord gave the Tenant an N7 notice of termination deemed served on that date by placing the document in the mailbox or the location where mail is normally delivered to the Tenant. The termination date on the N7 is August 22, 2022.
10. The notice of termination contains the following allegations:
 - Manipulation of the thermostat, affecting the comfort of the other residents in the complex and causing damage to the flooring in the rental complex
 - Damage to the kitchen drain by clogging it with chick peas on July 25, 2022
11. The Landlord testified that the Tenant manipulated the thermostat at various times throughout the year, which caused the house to be too cold or too warm in various parts of the rental complex. He testified that in the summer, the Tenant would not leave the air conditioning on at a reasonable temperature, which resulted in gaps and buckling in the wood floors. He testified that all occupants have access to the thermostat, but because the thermostat is located outside of the Tenant's bedroom door, the Landlord believes that it is the Tenant adjusting the temperatures.

12. The Tenant testified that another occupant of the complex was constantly adjusting the temperature, causing the basement to be too cold most of the time.
13. The Landlord alleges that on or around July 25, 2022, the Tenant intentionally put chick peas down the kitchen drain, causing it to clog. He testified that another occupant notified the Landlord that there was an issue.
14. The Tenant testified that he was at dialysis treatment on the date of the alleged sink incident. He attends dialysis treatment every Friday and upon returning home from his medical appointment, he was notified by another occupant of the clogged sink. He was sick with Covid and went directly to bed and did not go into the kitchen. He testified that another occupant in the complex made and brought him food over the weekend as he had not been able to cook for himself, or eat due to illness. The Tenant testified that he rarely uses the kitchen due to health and dietary restrictions. He cannot eat chick peas for health reasons. He testified that he was in isolation in his room during the period for which the alleged clogged drain occurred and denied using the kitchen sink at all during that time period.

Analysis

15. Section 63(1) of the Residential Tenancies Act, 2006, S.O. 2006, (the Act) states:


63 (1) Despite section 62, a landlord may give a tenant notice of termination of the tenancy that provides a termination date not earlier than the 10th day after the notice is given if the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex, (a) wilfully causes undue damage to the rental unit or the residential complex;

16. Based on the evidence before the Board, I am not satisfied on a balance of probabilities that the Tenant has wilfully caused undue damage to the rental unit or residential complex. The Landlord provided no evidence to support that the Tenant was responsible for the incidents alleged, nor that the incidents resulted in wilful undue damage. Therefore, I find that the Landlord has failed to meet the burden of proving the allegations on a balance of probabilities.

It is ordered that:

1. The Landlord's application is dismissed.

June 21, 2023
Date Issued



Donna Adams
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground 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.