



Order under Section 69
Residential Tenancies Act, 2006

File Number: EAL-93490-21

In the matter of: 42, 255 METCALFE STREET
OTTAWA ON K2P1R4

Between: 255 Metcalfe Inc. Landlord

and

Stuart Atkins Tenant

255 Metcalfe Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Stuart Atkins (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. 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 October 6, 2021.

The Landlord's Legal Representative, Amri Murray, the Landlord's Agent, Lynsy Jo Stinson, and the Tenant attended the hearing.

Determinations:

Preliminary matter

1. At the outset of the hearing, the Tenant stated that he did not receive the 2nd N5 notice upon which this application is based. After hearing submissions on the issue, I find that it is more likely than not that the Tenant received the 2nd N5. I say this because the Certificate of Service filed by the Landlord indicates that the 2nd N5 was given to the Tenant by placing it under the door or through a mail slot in the door of the rental unit. The Tenant acknowledges receiving the 1st N5 which was given to the Tenant in the same way.

Substantial interference

2. It was undisputed that on or about December 2, 2020, at approximately 3 a.m., the Tenant allowed two individuals into the residential complex. Pictures of the security footage that were provided at the hearing show these 2 individuals walking the hallways attempting to open doors to various apartment units, presumably in search of a vacant apartment unit. The pictures also show these individuals loitering in the stairwell of the

residential complex, tampering with the security cameras, a light fixture and water valve in the stairwell. The pictures also show what appears to be urine in the stairwell, a needle and drug paraphernalia from these individuals' activities that morning.

3. The Tenant testified that he was awoken at 3 a.m. when these individuals buzzed his apartment. Half asleep, the Tenant went downstairs to see who it was. He recognized one of the individuals and let them in. The Tenant then went back to his apartment. He did not really think that they were going to do anything harmful. He forgot about the incident until the next day when he was confronted by the property manager about the incident.
4. Pursuant to subsection 64(1) of the *Residential Tenancies Act, 2006* (the 'Act'), a tenancy may be terminated if the conduct of a tenant, or a person permitted in the residential complex by the tenant substantially interferes with the reasonable enjoyment of the residential complex by the landlord or another tenant or with another lawful right, privilege or interest of the landlord or another tenant.
5. I find that the Tenant's conduct of permitting the two individuals into the residential complex has substantially interfered with a lawful right, privilege or interest of the Landlord or other tenants. I say this because the other tenants of the residential complex have a right to safety and security within the residential complex. The Landlord has the lawful right to exclude people who are not residents, guests, or occupants from the residential complex. The Landlord also has an interest to ensure the safety of other tenants, their guests or occupants. The individuals permitted into the residential complex by the Tenant engaged in behaviour that substantially interfered with these lawful rights or interests. These individuals attempted to enter apartments; they left needles in the residential complex which pose a harm to other residents and small children; they also urinated in the stairwell.

Damage

6. Pursuant to subsection 62(1) of the Act, a tenancy may be terminated if a tenant or someone the tenant permits into the residential complex by the Tenant causes undue damage to the rental unit or residential complex. Subsection 89(1) of the Act provides that a landlord may apply for an order requiring the tenant to pay reasonable costs to repair or replace damaged property.
7. In addition to urinating in the stairwell, the Landlord alleges that the individuals permitted into the residential complex by the Tenant scratched the walls, floors and water valve in the stairwell. The Landlord claimed compensation for the damage in the amount of \$680.00 and provided an invoice to substantiate the claim.
8. The Landlord failed to adduce sufficient evidence to satisfy me that the individuals the Tenant permitted into the residential complex caused undue damage to the walls and floors in the main stairwell. No pictures were provided to support this claim.

9. However, I am satisfied that individuals urinated in the stairwell and the Landlord incurred a cost of \$90.40 (\$80 plus H.S.T) to clean and disinfect the area. I find this amount to be reasonable. Therefore, the Landlord is entitled to this amount.
10. With regards to the damaged water valve, I make no finding on this item. I say this because the N5 notices do not mention damage to the water valve. Similarly, the Landlord's application does not claim compensation for damage to the water valve.

Section 83

11. 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.
12. In granting relief from eviction, I have regard to the remedial nature of the Act and its tenant protection focus. The Tenant acknowledges that he made a "stupid mistake" in permitting these individuals entry into the residential complex and has not repeated the behaviour.

It is ordered that:

1. The Landlord's application to terminate the tenancy and evict the Tenant is denied on the condition that:
 - a) For a period of 12 months from the date of this order, the Tenant shall not permit entry into the residential complex to individual(s) that are not guest(s) of the Tenant or occupant(s) of the rental unit.
2. If the Tenant fails to comply with the conditions set out in paragraph 1 above, then, within 30 days of the breach, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition set out in paragraph 1 of this order.
3. The Tenant shall pay to the Landlord \$90.40, which represents the reasonable costs incurred by the Landlord to clean and disinfect the stairwell.
4. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
2. If the Tenant does not pay the Landlord the full amount owing on or before January 4, 2022, the Tenant will start to owe interest. This will be simple interest calculated from January 5, 2022 at 2.00% annually on the balance outstanding.

December 15, 2021
Date Issued



Khalid Akram
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.