

Order under Section 69
Residential Tenancies Act, 2006

File Number: TNL-33597-21

In the matter of: 1011, 60 BYNG AVENUE
TORONTO ON M2N7K3

Between: Lev Vekselstein Landlords
Julia Vekselstein-goldman

and

Robert Power Tenant

Lev Vekselstein and Julia Vekselstein-goldman (the 'Landlords') applied for an order to terminate the tenancy and evict Robert Power (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 Landlords has also applied for an order requiring the Tenant to compensate the Landlords for the damage; and 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 involving the production of an illegal drug, the trafficking in an illegal drug or the possession of an illegal drug for the purposes of trafficking. The Landlords also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on October 14, 2021.

Only the second-named Landlord attended the hearing when the matter was brought forward at 12:07pm.

Also in attendance was the Landlord's witness, Detective David Wallace.

Determinations:

1. By way of background, this is a month-to-month tenancy in which the lawful monthly rent is \$2,150.00. The rental unit is a condominium unit.
2. The Tenant is in possession of the rental unit and advised the Landlord that he would not be attending the hearing. The Landlord testified there was no request to reschedule made by the Tenant to her.
3. The Landlord's L2 application is based on a N6 notice of termination served to the Tenant on July 7, 2021 by mail with a termination date of July 22, 2021. The notice alleges the Tenant committed an illegal act in the rental unit, namely that the Tenant was in

possession of an illegal drug for the purposes of trafficking from his rental unit. On June 30, 2021, a search warrant was executed in the rental unit and evidence of drug activity was found and seized from the Tenant's unit. The Tenant was arrested.

4. Based on the evidence before the Board, I am satisfied that the Tenant has committed an illegal act involving the possession of an illegal drug for the purposes of trafficking in the rental unit. The tenancy is terminated for the following reasons.

LANDLORD'S EVIDENCE

5. The Landlord's witness, Detective David Wallace, who attended the rental unit on the day in question to execute the warrant, testified that the Tenant was apprehended on that day at the residential complex. When the rental unit was searched, several items were found and seized including many types of drugs (fentanyl, Adderall, etc), weighing scales, currency, drug paraphernalia and packaging material. DW further testified that the quantity of the drugs found in the rental unit was consistent with use that was greater than personal recreational use. As a result of this warrant, the Tenant was charged with possession for the purposes of trafficking and possession of a Schedule 1 substance under C.D.S.A. These charges are before the court as of the hearing date.
6. The Landlord testified that she also attended the rental unit on that day for an unrelated matter. When DW opened the door to the rental unit, she saw three other police officers and was informed of what had happened. She testified that she saw pills everywhere with packaging material, weighing scales and the Tenant's computer screen was open to a drug website.
7. The Landlord seeks a termination of the tenancy and reimbursement of the application filing fee in the amount of \$190.00.
8. As part of the Landlord's L2 application, there is a section 89 damage claim for \$596.92.
9. In order for an application to succeed under subsection 89(1) of the Act, a landlord must establish the following:
 - I. There was property damage to the rental unit or residential complex;
 - II. The damage is "undue" meaning that it is not normal wear and tear and it is not insignificant; and
 - III. The damage was a result of wilful or negligent conduct by the Tenant, occupant or guest.
10. In this context, I take the word "property" to refer to the physical objects like the walls, ceilings, floors, appliances and fixtures in a residential complex.
11. If all of these factors are met, then the Board can award the Landlord's the reasonable cost of repair, or the replacement cost if it is not reasonable for the damage to be repaired.

12. The Landlord's uncontested evidence was on July 8, 2021, the Landlord received a call from the property management in regards to damage that was discovered by them to the fire alarm speakers in the bedroom and living room of the rental unit. Their investigation concluded that these devices were disconnected, and the wires were tampered with to the point that they could no longer be repaired.
13. The Landlord testified that she attempted to connect with the Tenant to discuss the damage but the Tenant was not responsive. The property management conducted the repairs to the rental unit and charged the Landlord for the cost of these repairs.
14. The Landlord seeks reimbursement of this amount in full as the damage occurred due to the Tenant's conduct.

ANALYSIS

15. Section 61(1) of the Residential Tenancies Act, 2006 states:

61 (1) A landlord may give a tenant notice of termination of the tenancy if the tenant or another occupant of the rental unit commits an illegal act or carries on an illegal trade, business or occupation or permits a person to do so in the rental unit or the residential complex.

[Emphasis added.]

16. While there is no evidence before the Board of an actual drug transaction that occurred at the rental unit, I find that the presence in the rental unit of a significant amount and variety of drugs and items commonly used in the drug trade (scale, baggies, cash) is sufficient to meet the Landlords' burden of proof. Based on the Landlord's uncontested evidence, I am satisfied that the Tenant has committed an illegal act involving the trafficking of an illegal drug at the rental unit.
17. Section 89 of the Act states:

89 (1) A landlord may apply to the Board for an order requiring a tenant or former tenant to pay reasonable costs that the landlord has incurred or will incur for the repair of or, where repairing is not reasonable, the replacement of damaged property if,

while the tenant or former tenant is or was in possession of the rental unit, the tenant or former tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant or former tenant wilfully or negligently causes or caused undue damage to the rental unit or the residential complex; and...

18. Based on the evidence before the Board, I find that the damage constitutes property damage that is not a result of normal wear and tear. I find that while no one saw the Tenant disconnect or mutilate the wires, the invoice from the technician suggests it was deliberate conduct by someone with access to the rental unit as far back as the bedroom. I find the cost claimed by the Landlords is the actual cost incurred by them as a result of the Tenant's or their occupant/guests' actions and that amount shall be awarded.

19. The Landlords collected a rent deposit of \$2,150.00 from the Tenant and this deposit is still being held by the Landlords.
20. Interest on the rent deposit is owing to the Tenant for the period from July 25, 2020 to July 22, 2021
21. 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 postpone the eviction until April 30, 2020 pursuant to subsection 83(1)(b) of the Act.
22. This order contains all of the reasons for my decision within it. No further reasons shall be issued.

It is ordered that:

1. The tenancy between the Landlords and the Tenant is terminated, as of July 22, 2021. The Tenant must move out of the rental unit on or before October 30, 2021.
2. The Tenant shall pay to the Landlords \$596.92, which represents the reasonable costs of repairing the damage to the fire speakers in the rental unit.
3. The Tenant shall pay to the Landlords \$4,562.46 (**less any amounts already paid to the Landlord for this period**), which represents compensation for the use of the unit from July 23, 2021 to October 25, 2021, less the rent deposit and interest the Landlords owe on the rent deposit.
4. The Tenant shall also pay to the Landlords \$70.68 per day for compensation for the use of the unit from October 26, 2021 to the date the Tenant moves out of the unit.
5. The Tenant shall also pay to the Landlords \$201.00 for the cost of filing the application.
6. If the Tenant does not pay the Landlords the full amount owing on or before October 30, 2021, the Tenant will start to owe interest. This will be simple interest calculated from October 31, 2021 at 2.00% annually on the balance outstanding.
7. If the unit is not vacated on or before October 30, 2021, then starting October 31, 2021, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
8. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or after October 31, 2021. The Sheriff is requested to expedite the enforcement of this order.



October 25, 2021
Date Issued

Sonia Anwar-Ali
Member, Landlord and Tenant Board

Toronto North-RO
47 Sheppard Avenue East, Suite 700, 7th Floor
Toronto ON M2N5X5

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 April 30, 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.