



Order under Section 69
Residential Tenancies Act, 2006

File Number: TSL-10375-19

In the matter of: 908, 105 WEST LODGE AVENUE
TORONTO ON M6K2T8

Between: Timbercreek Asset Management Inc. Landlord

and

Kalosai Gizella Tenant

Timbercreek Asset Management Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Kalosai Gizella (the 'Tenant') because the Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person. 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 August 3, 2021. The Landlord's Representative, Vinuri Sivalingam, and the Tenant's Legal Representative, Gabriel Calderon, attended the hearing.

Determinations:

1. The Landlord gave the Tenant an N7 notice alleges that the Tenant engaged in the following behaviour that serious impairs or has seriously impaired the safety of any person:
 - a) On June 27, 2019, August 22, 2019, and September 12, 2019, the Tenant left the stove on in the unit while the Tenant was not home.
 - b) On September 9, 2019 at 12:10 p.m., the Tenant attended the management office and requested a letter to confirm pest control treatments. After being told that a letter would be requested, the Tenant started to yell and bang on the glass at the reception. The Tenant was told to leave due to her behaviour and refused to do so. As the Community Manager left the office, the Tenant followed while continuing to yell, scream and acting belligerently.
 - c) On September 19, 2019 at 11:15 a.m., the Tenant began screaming at the pest control coordinator and technician in the elevator demanding a letter. The Tenant then threatened them, indicating that her husband will come and beat them up. The husband arrived at the scene and began screaming at the pest control

coordinator and technician. At one point in the altercation, the husband lunged at the pest control coordinator. The husband walked away threatening to beat up the pest control coordinator.

- d) On September 20, 2019 at 10:15 a.m., the Tenant attended the management office to request a letter regarding pest control treatments done to her unit. She was told that a letter would be dropped off at her unit by end of day. The Tenant left and returned with a Hungarian translator and began screaming in Hungarian and banging on the counter. According to the translator, the Tenant was threatening to beat the admin staff if a letter was not provided.
2. The Tenant does not dispute the allegations in the N7 notice. Instead, the Tenant's Legal Representative argues that the behaviour does not constitute serious impairment of safety. Although threats were uttered, they were not intended to be acted upon. The Tenant's Legal Representative argues that in accordance with the plain language of the section 66, the serious impairment must relate to present not future consequences.
 3. The N7 notice to terminate the tenancy is brought pursuant to section 66 of the *Residential Tenancies Act, 2006* (the 'Act'), which states:

66 (1) A landlord may give a tenant notice of termination of the tenancy if,
 - (a) an act or omission of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant seriously impairs or has seriously impaired the safety of any person; and
 - (b) the act or omission occurs in the residential complex.
 4. Section 66 of the Act uses the present and past tenses of the word impair. The future tense is omitted. Therefore, it would be logical to conclude that the potential for future impairment of safety is insufficient. However, the Divisional Court in *Harris v. Toronto Community Housing Corp.*, [2009] O.J. No. 2873 at para. 20 held that "[i]t is sufficient that it is foreseeable that the act or omission could have resulted in or may result in a serious impairment to safety."
 5. Considering the above, I am satisfied that the Tenant seriously impaired the safety of persons in the residential complex by leaving the stove on while she was not home on June 27, August 22, and September 12, 2019. By leaving the stove unattended, it is foreseeable that this act or omission could have resulted in a fire thereby placing other tenants at risk to serious injury or death.
 6. With regards to the incidents on September 9, 19, and 20, 2019, I am not satisfied that they constitute serious impairment of safety as contemplated by the Act. I say this because these incidents involve screaming, yelling, and threats. There was insufficient evidence to suggest that the Tenant or her husband intended to act upon the threats. While the husband lunged at the pest control coordinator on September 19, 2019, there was no evidence that the husband followed through on his threat to beat up the pest

control coordinator. I also note that this incident occurred approximately two years ago and there was no evidence of repeat behaviour by the Tenant or her husband.

Section 83

7. 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.
8. The Landlord is not seeking termination of the tenancy. The Tenant's representative advised the Board that the Tenant was under a considerable amount of stress at the time; she has nine (9) children; the Tenant required the letter regarding pest control treatments in order to apply to a fund to buy furniture; and there has not been a re-occurrence of the offending behaviour since the N7 was served on the Tenant.

It is ordered that:

1. The Landlord's application for eviction of the Tenant is denied on the condition that the, for a period of 12 months from the date of this order, the Tenant shall not leave the stove on unattended in 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 \$175.00 for the cost of filing the application.
4. If the Tenant does not pay the Landlord the full amount owing on or before September 27, 2021, the Tenant will start to owe interest. This will be simple interest calculated from September 28, 2021 at 2.00% annually on the balance outstanding.

September 22, 2021
Date Issued



Khalid Akram
Member, Landlord and Tenant Board

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15 Grosvenor Street, 1st Floor
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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 March 28, 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.