



Order under Section 69
Residential Tenancies Act, 2006

File Number: TSL-19154-20

In the matter of: 325, 2 EVA ROAD W
ETOBICOKE ON M9C0A9

Between: Jennifer Monteiro Landlord

and

Nova Stephenson Tenants
Stajha Martin

Jennifer Monteiro (the 'Landlord') applied for an order to terminate the tenancy and evict Nova Stephenson (NS) and Stajha Martin (SM) (the 'Tenants') because they, another occupant of the rental unit or someone they permitted in the residential complex have substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant. The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by teleconference on October 27, 2021.

The Landlord and the Tenant SM attended the hearing.

Preliminary issues:

1. The Tenant SM requested an adjournment. The Landlord objected.
2. SM said she needs an adjournment because the Landlord filed and served several forms and has filed other applications and this has made it difficult for her to prepare. She requested that this matter be adjourned to be heard with the other applications. I denied that request. It is not appropriate to make this kind of request at a hearing; it must be made in writing before the hearing so that the Member deciding the request can spend time determining if there is any overlap in the issues between the different matters.
3. SM also said she was confused because she thought this matter was to be heard with the others, even though there is no order or direction joining this matter with others. There was a direction issued on October 21, 2021 joining two other applications by the Landlord, which both have to do with arrears. That direction does not mention this application. It is difficult to see what would be confusing about this application not being mentioned in the direction.

4. I denied the request for an adjournment. There appears to be no overlap in the issues in the two other applications and this matter so there is no chance of inconsistent decisions if this matter is heard separately from the others. SM should not have been confused by the very clear direction ordering that the other matters be heard together. This matter is not at all complicated; the material facts are agreed and there is no complicated legal issue. It would have been very simple and easy to prepare for this hearing, even as an unrepresented party.
5. SM also testified that she never received the N5 notice for this matter. The Landlord filed a certificate of service ('COS') by leaving it with an adult person at the unit on November 16, 2020. The Landlord testified that she served the N5 notice on November 16, 2020 by leaving it with someone who she assumed was SM's boyfriend. SM testified that she did not have a boyfriend at that time. The Landlord said she has a video of giving the N5 notice to an adult in the unit. Before we could watch the video, SM acknowledged that adults have been in her unit looking after her child from time to time; she asked all of them about a notice and none of them said they received one. Considering the evidence of the parties on this issue, I find, on a balance of probabilities, that the Landlord served the N5 notice on the Tenants by leaving a copy of it with an adult person at the unit on November 16, 2020. The Landlord's testimony was supported by the COS, which was prepared approximately one month after the date of service. The Tenant's assertions that she did not receive the document were not sufficient to outweigh the Landlord's evidence.

Determinations:

1. The Landlord served an N5 notice of termination ('N5 notice') on the Tenants on November 16, 2020 on the ground of substantial interference.
2. The N5 notice makes two allegations: (1) that the Tenants have failed to pay for utilities; and (2) that one of the Tenants has continuously harassed the Landlord with incessant complaints and threats. The second allegation does not give enough detail; it does not tell the Tenants when they have harassed the Landlord with complaints or the nature of those complaints and the harassment. Because of this lack of detail, the Tenants would not know the case to be met and so I found this part of the N5 notice to be invalid.
3. The only remaining issue is the payment of utilities.
4. The parties agree that the tenancy agreement includes a term that the Tenants pay for utilities, that when the N5 notice was served the Tenants' utilities account was in arrears and that the utilities account was not cleared within the seven days after the N5 notice was served. The utilities account was not cleared by the date of the hearing.
5. Based on the above, I find that the Tenants substantially interfered with a lawful interest of the Landlord by failing to pay for utilities as is required by the tenancy agreement.
6. 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 conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

7. SM testified that she could have the utilities account cleared by the end of the calendar year. The Landlord testified that the Tenants' history of not paying for utilities has caused her financial strain. The parties agree that the amount owed in the utilities account is \$323.37 to November 30, 2021.
8. Considering the circumstances and the relatively small amount owed for utilities, I believe it is most fair to make a conditional order requiring the Tenants to clear the utilities account by November 30, 2021. Given the history, it is appropriate to further order that the Tenants keep the utilities account in good standing for a six month period.
9. I informed the parties of my decision at the hearing so the Tenants are aware that the utilities account must be cleared by November 30, 2021 otherwise the Landlord can apply to evict. I reserved on whether I would order the Tenants to keep their account in good standing.

It is ordered that:

10. The Tenants shall clear the utilities account (bring it to a zero balance) no later than November 30, 2021.
11. From December 1, 2021 through to and including May 31, 2022 the Tenants shall keep the utilities account in good standing.
12. The Tenants shall pay to the Landlord \$186.00 for the cost of filing the application.
13. If the Tenants do not pay the Landlord the full amount owing on or before January 31 2022, they will start to owe interest. This will be simple interest calculated from February 1, 2022 at 2.00% annually on the balance outstanding.
14. If the Tenants fail to comply with paragraphs 10 or 11 of this order, the Landlord may apply under section 78 of the Act, without notice to the Tenants, for an order terminating the tenancy and evicting the Tenant. The Landlord must make this application no later than 30 days after the Tenant's breach of paragraph .



December 15, 2021
Date Issued

Renée Lang
Member, Landlord and Tenant Board

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.