



Order under Section 69
Residential Tenancies Act, 2006

File Number: TEL-14734-21

In the matter of: MAIN UNIT, 8 BLAKE CRT
AJAX ON L1T3P3

Between: S M Shafiul Islam Landlord

and

Collin Gerald Patrick Temoin Tenant

S M Shafiul Islam (the 'Landlord') applied for an order to terminate the tenancy and evict Collin Gerald Patrick Temoin (the 'Tenant') because the Tenant another occupant of the rental unit or someone they permitted in the residential complex has 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 Tenant remained in the unit after the termination date. The Landlord is also seeking an order for compensation that the Tenant or someone else visiting or living in the rental unit caused damage to the rental unit or residential complex.

This application was heard by videoconference on July 27, 2021.

Only the Landlord attended the hearing. As of 12:04 p.m., the Tenants were not present or represented at the hearing although properly served with notice of this hearing by the Board.

Determinations:

Preliminary Issues

1. Michael Philip Islam is removed as a Tenant from the application as he vacated the rental unit in January 2021 by agreement of the parties.
2. The Certificates of Service filed with the Board say the 1st N5 was served to the Tenants via email on October 19, 2021, and the 2nd N5 was also served by email on January 4, 2021.
3. Rule 3.4 of the Board's Rules of Practice says parties may consent in writing at any time to service by email.

4. The Landlord testified that the lease addressed that all communication, including any notices, would be given via email because of the situation with COVID-19.
5. The Landlord further testified that he knows the Tenants received the notices because he spoke with them after they received the first N5. As for the 2nd N5, the Landlord is positive this was received because the behaviour worsened; the Tenant Collin Gerald Patrick Temoin has told him that no one should be telling him how to act, then he acts worse and this is precisely what happened.
6. Based on the Landlord's uncontested testimony, I found that both N5 notices were received and the matter proceeded to hearing.

Merits

7. This application is based on two Notices of Termination that the Landlord served upon the Tenants. The Landlord served the first N5 on October 19, 2020 (the "1st N5") and the Landlord served the second N5 on January 4, 2021 (the "2nd N5"). In both notices, the Landlord claims that the Tenant, an occupant or a guest of the rental unit substantially interfered with the reasonable enjoyment or a lawful right, interest or privilege of the Landlord or another tenant. The substantial interference is with respect to loud noise and/or music and fighting/yelling. The incidents on the notices were: October 17, 2020; November 18, 2020; November 23, 2020; November 29, 2020; and, December 19, 2020.
8. The Landlord collected a rent deposit of \$6,100.00 from the Tenant and this deposit is still being held by the Landlord.
9. Interest on the rent deposit is owing to the Tenant for the period from October 1, 2020.

Evidence

10. The Landlord testified that the issue that gave rise to the 1st N5, specifically continuous loud music and noise on October 17, 2020 from 11:45 p.m. to 1:45 a.m. then sporadically until 6:00 a.m. After talking to the Tenants, the behaviour improved, but only for a few weeks and then things started back up again.
11. With respect to the 2nd N5, the Landlord testified midnight on November 18, 2020, he received a text from the basement tenant that the Tenants' dog was running around upstairs and continuously barking. The basement tenant said he could not sleep. The Landlord entered the text into evidence.
12. On November 23, 2020 at 8:30 p.m. he received a compliant from the basement tenant that there was massive fighting and it sounded like things were being thrown around. The basement tenant said he was very uncomfortable with what was going on, especially when sometimes it sounded like they were right outside his door. The Landlord entered the text into evidence.

13. The basement tenant messaged the Landlord again on November 29, 2020 at 1:30 a.m. saying that there was, again, massive fighting and screaming with things being thrown. The basement tenant said he could not sleep at all. The Landlord entered the text into evidence.
14. The Landlord also testified that he texted and called the Tenants, and even drove to the property to talk to them. They discussed being respectful of others and not being noisy so as to disrupt others. The Tenants said they would act better, but that never happened. Plus, when the Tenants realized that the basement tenant was complaining, they acted even worse. The Landlord entered into evidence.
15. The Landlord further testified that on December 19, 2020 at midnight he received another text from the basement tenant about the Tenants having a loud party with more than 5 people, which is against the COVID rules. Plus, they were smoking so much marijuana that it was coming through the vents into his unit; the smoke triggered the fire alarm. Once again, he could not get any sleep. The Landlord entered the text into evidence.
16. When Michael Philip Lopes vacated the rental unit in January 2021, the Landlord thought things would improve, which they did for a bit, but then the noise etcetera started up again.
17. The Landlord testified that he received more complaints about the Tenant and entered into evidence texts from February 8, 2021; February 27, 2021; March 2, 2021; March 6, 2021; May 14, 2021; May 23, 2021; June 13, 2020; June 19, 2021; June 24, 202; and July 8, 2021. The Landlord also entered into evidence a letter date May 28, 2021 from the Town of Ajax with respect to two incidents of unapproved open air burning on March 25, 2021 and April 10, 2021. The Landlord also testified that the Tenant has not paid any rent or utilities since he received the hearing notice

Analysis

18. Section 64 of the *Residential Tenancies Act, 2006* (the 'Act') states:

(1) A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.

(3) The notice of termination under subsection (1) is void if the tenant, within seven days after receiving the notice, stops the conduct or activity or corrects the omission.

19. Section 68 of the Act states that if an N5 becomes void pursuant to section 64(3), the landlord may serve a 2nd N5 if, within six months after the 1st N5 was given, conduct occurs or a situation arises that constitutes a substantial interference in section 64.
20. Here the uncontested testimony and evidence establishes that the incident in the first N5 occurred, and that this behaviour was corrected as no further incidents occurred within the 7-day voiding period.
21. The uncontested testimony and evidence before me also establish that the Tenant's behaviour has substantially interfered with the reasonable enjoyment of other tenants. The events detailed in the 2nd N5 notice directly affected the basement tenant's peaceful enjoyment of his home. The evidence also establishes that even when issues were discussed with the Tenant, the behaviour did not stop or improve.
22. Section 89 of the *Residential Tenancies Act, 2006* (the 'Act'). Section 89 says:
 - (1) A landlord may apply to the Board for an order requiring a 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 the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex wilfully or negligently causes undue damage to the rental unit or the residential complex and the tenant is in possession of the rental unit.
23. In the application the Landlord requested \$600.00 for damage based on a discussion he had with another tenant that has since vacated. There were no further details and the Landlord did not present any testimony on this issue at hearing, therefore this portion of the application is dismissed.

Relief from Eviction

24. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. I accept the Landlord's submission that eviction is necessary; this is a two-unit complex and the Tenant's behaviour affects the whole complex, including the Landlord's ability to re-rent the basement unit. Further, the Tenant has made no good faith effort to address the behaviour issues that give rise to this application.
25. The Landlord submitted that this is a two-unit complex, with one unit on the main floor and the other unit in the basement. Because of the Tenant's behaviour he has already lost the basement tenant. He cannot re-rent the unit with such behaviour continuing and there is no evidence that the Tenant will change his pattern of behaviour as he is still getting complaints. The Landlord requested the standard 11-day order for eviction.
26. This order contains all the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated, as of October 10, 2021. The Tenant must move out of the rental unit on or before October 10, 2021.
2. If the unit is not vacated on or before October 10, 2021, then the Tenant shall pay to the Landlord \$95.34 per day for compensation for the use of the unit from October 11, 2021 until vacant possession is given.
3. If the unit is not vacated on or before October 10, 2021, then starting October 11, 2021, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
4. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after October 11, 2021.

September 29, 2021

Date Issued



Diane Wade

Member, Landlord and Tenant Board

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2275 Midland Avenue, Unit 2
Toronto ON M1P3E7

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 11, 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.