



Order under Section 69

Residential Tenancies Act, 2006

File Number: SOL-17099-20

In the matter of: B, 31 DUKE STREET
BRANTFORD ON N3T3T5

Between: Andy Abra Landlord

and

Denise Labrie Tenant

Andy Abra (the 'Landlord') applied for an order to terminate the tenancy and evict Denise Labrie (the 'Tenant') because the Tenant, another occupant of the rental unit or someone the Tenant 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.

This application was heard by videoconference on November 3, 2021. The Landlord attended and was represented by Jordan Nieuwhof. As of 10:35 a.m. the Tenant was not present or represented at the hearing although properly served with notice of this hearing as it appears from the Certificate of Service.

Dwayne Lalonde appeared as a witness for the Landlord.

Determinations:

1. The application is based on a non-voidable Notice of Termination (N5) with a termination date of October 13, 2020, deemed served on the Tenant on September 29, 2020 pursuant to s. 68 (1) of the *Residential Tenancies Act, 2006* (the 'Act'). The Notice alleges the Tenant's yelling and banging on the floors and walls of the rental unit are substantially interfering with the reasonable enjoyment of other tenants.
2. Because the application is based on a second N5 the only inquiry the Board must make with respect to the first N5 notice is to verify it meets the technical and substantive requirements of the *Act*.
3. The first N5 alleges the behaviour of the Tenant disturbed the sleep of the other tenants due to her yelling and banging on the floor. The behaviour improved during the voiding period of 22, 2020 to July 29, 2020. I find the Tenant voided the first N5.

4. Therefore, there is no dispute the first N5 meets the technical requirements of the *Act* and I am satisfied that it does.
5. There is also no dispute that on July 17, 2020 at 3:30 a.m. the Tenant disturbed the neighbouring tenants' sleep by yelling and banging on the floor of the rental unit.
6. The Landlord then served the Tenant a second N5 for yelling and banging on the walls on September 22, 2020 at 4:23 a.m. alleging that the Tenant has, as a result of these actions, substantially interfered with another tenant's reasonable enjoyment of the residential complex.
7. The Landlord's witness testified he lives in the unit beside the Tenant, and that their bathrooms share a common wall. He has lived in his unit for approximately five and one-half years, and the Tenant had resided next door for one and one-half years.
8. He specifically recalled the disturbance of September 22, 2020 alleging the Tenant used profanities, screamed and banged on the walls. The witness stated the behaviour is an almost daily occurrence and had occurred as recently as the date of hearing at 06:45 a.m. His attempt to discuss his concerns with the Tenant have not resulted in any change to the Tenant's behaviour.
9. The Landlord gave oral testimony that he is constant receipt of complaints from other tenants in the building, regarding the disturbances perpetrated by the Tenant. One Tenant has indicated they would like to move out but are unable to do so because of the financial implications. His attempts to reach out to the Tenant have yielded no results.
10. Having considered the evidence I am satisfied this conduct has substantially interfered with the Landlord's and the other tenants' reasonable enjoyment of the residential complex, including their ability to sleep, and the Landlord's ability to run a rental business free of disturbances and complaints; and that the Tenant's actions substantially interferes with a lawful right, privilege or interest of the Landlord, specifically the ability to retain tenants.
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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated, as of December 10, 2020. The Tenant must move out of the rental unit on or before December 10, 2021.
2. The Tenant shall pay to the Landlord \$8,834.46 (less any payments made to the Landlord after the application was filed), which represents compensation for the use of the unit from October 14, 2020 to November 29, 2021, less the rent deposit and interest the Landlord owes on the rent deposit.

3. The Tenant shall also pay to the Landlord \$23.01 per day for compensation for the use of the unit from November 30, 2021 to the date the Tenant moves out of the unit.
4. If the Tenant does not pay the Landlord the full amount owing on or before December 10, 2021, the Tenant will start to owe interest. This will be simple interest calculated from December 10, 2021 at 2.00% annually on the balance outstanding.
5. If the unit is not vacated on or before December 10, 2021, then starting December 11, 2021, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced
6. 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 December 11, 2021.

November 29, 2021
Date Issued



Dawn King
Member, Landlord and Tenant Board

Southern-RO
119 King Street West, 6th Floor
Hamilton ON L8P4Y7

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 June 5, 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.