



Order under Section 69
Residential Tenancies Act, 2006

File Number: HOL-11220-21

In the matter of: 301, 68 CANTERBURY PLACE
NORTH YORK ON M2N0H8

Between: Sofia Balanovsky
2152791 Ontario Corp.
2797314 Ontario Inc

Landlords

and

Alex Diker

Tenant

Sofia Balanovsky, 2152791 Ontario Corp. and 2797314 Ontario Inc (the 'Landlords') applied for an order to terminate the tenancy and evict Alex Diker (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, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person.

This application was heard by way of video conference on October 7, 2021. The Landlord Sofia Balanovsky and the Tenant's mother Pauline Diker attended the hearing on behalf of the Tenant and was represented by Bryan Rubin, Licensed Paralegal.

Determinations:

1. The Landlord's application is based on an N7 notice of termination served to the Tenant on July 13, 2021 with a termination date of August 1, 2021.
2. The N7 notice alleges 3 incidents in where the Tenant seriously impaired the safety of another person within the residential complex and that the Tenant has willfully damaged the residential complex.
3. The residential complex is a condominium and the rental unit is located within the condo. The rental unit in question is the only rental unit owned by the Landlord within this condominium.

Preliminary Motion:

4. At the commencement of the Tenant's legal representative brought forward a preliminary motion to dismiss the Landlord's application.
5. The Tenant's representative argued that dates listed on the N7 notice are not clear as to whether they are the actual dates that the alleged conduct occurred or the dates that the Landlord was advised of the alleged incidents by the Condo Corp. The Tenant's representative argued that in the absence or clarity of the exact dates, the Landlord's notice fails to comply with the requirements of the Ontario Divisional Court decision in *Ball v. Metro Capital Property and Lockhurst* (December 19, 2002), Toronto Docket No. 8/02.
6. In *Ball* the Court explained that a notice of termination must provide sufficient detail to allow the opposing party to know the specific allegations being made so that the opposing party can be in a position to know the case that must be met.
7. The Landlord testified that the dates listed on the notice are the dates of the alleged conduct. The Landlord stated that she did not personally witness the incidents and as such wrote on the N7 notice that she was advised of each incident by the Condo Corp. The Landlord further stated that each incident was reported to her within a few days of the alleged conduct occurring.
8. In my view, the Landlord's N7 notice complies with the requirement to provide reasons and details as set out in section 43(2) of the *Residential Tenancies Act, 2006* (Act) and interpreted in *Ball*. The allegations in the notice are detailed, clear and would not suggest that the Tenant would be confused, unable to understand, dispute or deny the allegations set out in the notice. Although the dates on the notice did not indicate they were the dates the actual conduct occurred, the allegations are not everyday incidents, but rather three single incidents that took place over the course of four months. Further, the Landlord provided a detailed description of the alleged conduct and further advised that the Condo Corp. reported the incidents to the Landlord.
9. As such, I find that the Landlord's notice is sufficient on its face and the matter proceeded to be heard on the merits of the application.

Landlord's Evidence:

10. The Landlord called no witnesses and provided oral testimony based on her understandings of the incidents. Thus, her evidence was entirely hearsay.
11. The Landlord testified that on April 21, 2021 the Condo Corp. sent her an email stating that on April 18, 2021, the Tenant entered the building's security area and appeared to be tampering with the security computer, cameras, and equipment. The Landlord entered evidence an email from the Condo Corp. with images from the Landlord's CCTV camera (LL Exhibit #1). The four pictures show the Tenant behind the security desk located in the main lobby of the Condominium and touching the keyboard and computer. No

evidence suggesting that this incident resulted in damage to the security equipment was entered.

12. On May 12, 2021 the Landlord was notified by the Condo Corp. that on May 7, 2021 the Tenant was intoxicated and harassing his neighbouring resident by scratching on their door with a sharp object. The Landlord testifies that the Police were contacted. The Landlord did not personally witness the incident and further did not provide any video footage from the CCTV surveillance camera, statements from the neighbouring resident or pictures of the alleged damaged. When asked if the Landlord ever viewed the surveillance footage, she advised that she had not seen the footage and is only going by what the Condo Corp. told her.
13. On July 10, 2021 the Landlord was notified by the Condo Corp. that on July 9, 2021 the Tenant was in the hallway intoxicated and was yelling threats towards his neighbouring resident. The Landlord testifies that the Police were contacted. The Landlord submitted into evidence email correspondence between the Landlord and the Condo Corp. regarding the incident (LL Exhibit #2). In the email, the Condo Manager states that reports were received regarding the alleged incident. The Landlord did not personally witness the incident and did not provide written statements from the neighbouring resident. When asked if there was video footage, the Landlord indicated that she was not aware of any and was simply going by what the Condo Corp. had advised her.
14. The Landlord testified that the Condo Corp. has issued a letter to her to take action against her Tenant. The Landlord stated that the Condo Corp. sent her an invoice for \$1,070.68. The invoice is from the Condo Corp's Lawyer billing for 2.30 hours of services in reviewing the incidents and drafting compliance letters regarding the conduct of the Tenant. The Landlord submitted a copy of the invoice into evidence (LL Exhibit #3).
15. In addition to termination of the tenancy, the Landlord is seeking \$1,600.00 in damages on the L2 application. The damages consist of the invoice for legal fees and the costs of repairing the neighbouring resident's front door due to the May 12, 2021 incident. The Landlord did not provide an invoice or any correspondence to support the damage charge to the neighbouring resident's door.

Tenant's Evidence:

16. The Tenant's legal representative argues that the Landlord has provided no direct evidence of the incidents that allegedly took place on May 12, 2021 and July 10, 2021.
17. The Tenant's representative argues that the Landlord's allegations should have been made using an N5 notice for substantial interference rather than an N7 notice alleging serious impairment of safety. The Tenant's representative further argues that there is no evidence to support that the Tenant has caused wilful damage to the rental unit or residential complex.
18. The Tenant disputes the conduct plead on the May 12, 2021 and July 10, 2021.

Analysis:

19. Section 63(1) of the *Residential Tenancies Act, 2006, S.O. 2006*, (the Act) states:

63 (1) Despite section 62, a landlord may give a tenant notice of termination of the tenancy that provides a termination date not earlier than the 10th day after the notice is given if the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex,

(a) wilfully causes undue damage to the rental unit or the residential complex;

20. Based on the evidence before the Board, I am not satisfied on a balance of probabilities that the Tenant has wilfully caused undue damage to the rental unit or residential complex. The Landlord provided no direct evidence to support that any of the three incidents resulted in wilful damage. Although the Landlord asserted that the Tenant scratched a neighbouring resident's door on May 7, 2021, the Landlord was unable to provide any video footage or pictures of the damage. Further, the Landlord did not witness the incident and the individuals who allegedly did witness the incident were not present to testify and provided no sworn statements confirming the allegations on the N7 notice. While hearsay evidence may be admitted at the Board, in this case the hearsay evidence is insufficient to meet the Landlord's burden of proving the allegations on the balance of probabilities.

21. Section 66(1) of the Act 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

a. the act or omission occurs in the residential complex.

22. Based on the evidence before the Board, I am not satisfied on a balance of probabilities that the Tenant has seriously impaired the safety of another person within the residential complex. In each of the three incidents plead on the N7 notice, the Landlord failed to provide any direct evidence to support that another person's safety was impaired by the alleged conduct. The Landlord was unable to provide any video footage of the May 7, 2021 and July 9, 2021 incidents that would support such conduct. Further, the Landlord did not witness the incidents and the individuals who allegedly did witness the incidents were not present to testify and provided no sworn statements confirming the allegations on the N7 notice. While hearsay evidence may be admitted at the Board, in this case the hearsay evidence is insufficient to meet the Landlord's burden of proving the allegations on the balance of probabilities.

23. Section 89 (1) 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,

(a) 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;

24. As stated above, I am not satisfied that the Tenant has wilfully damaged the residential complex and based on the lack of evidence before the Board, I am unable to conclude that the Tenant had negligently caused undue damage to the residential complex on May 7, 2021. Further, the Landlord's claim for reimbursement of the Condo Corp's invoice for legal fees incurred does not constitute undue damage to property.

25. As this is a Landlord application, the Landlord bears the onus of proving on a balance of probabilities that the Tenant has seriously impaired the safety of another within the residential complex and/or wilfully damaged the rental unit or residential complex. As indicated above, I find that the Landlord has failed to prove their case on a balance of probabilities and as such, the application must be dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

November 5, 2021
Date Issued

Head Office
777 Bay Street, 12th Floor
Toronto Ontario M5G2E5



Fabio Quattrociocchi
Member, Landlord and Tenant Board

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.