



Order under Section 21.2 of the
Statutory Powers Procedure Act
and the **Residential Tenancies Act, 2006**

File Number: TEL-10283-20-RV

In the matter of: 2, 1 RANSTONE GARDENS
SCARBOROUGH ON M1K2T3

Between: Cosmos Brands Corp. Landlord

and

Garret Evans Tenants
Susan Hackett

Review Order

Cosmos Brands Corp. ('CBC' or the 'Landlord') applied for an order to terminate the tenancy and evict Susan Hackett and Garret Evans ('SH' and 'GE' or collectively, the 'Tenants') because they, another occupant of the rental unit or a person the Tenants permitted in the residential complex have seriously impaired the safety of any person. (L2 application)

This L2 application was resolved by order TEL-10283-20 issued on March 10, 2021.

On March 22, 2021, the Landlord requested a review of the order, alleging they were not reasonably able to participate in the proceedings.

The review request was heard by videoconference on May 10, 2021. At that hearing appeared the Landlord's Agent, Maria Golias ('MG') and the Tenants. The Tenants declined to consult with Tenant Duty Counsel. Both sides had brought potential witnesses to the hearing, but the witnesses were not needed for the May 10, 2021 hearing.

From the May 10, 2021 hearing, Interim order TEL-10283-20-RV-IN2 issued on May 17, 2021, which granted the review, cancelled the May 10, 2021 order and sent the L2 application to a hearing, in effect to be heard *de novo*.

The second hearing for the L2 application was held by videoconference on July 12, 2021. Only MG attended the hearing. As of 1:35 pm, the Tenants were not present or represented at the hearing. The Landlord called forward the following witnesses at this hearing: Tatyana Trusz ('WIT1') and Nikki Kontogianopoulos ('WIT2'). On June 14, 2021, the Tenant SH emailed the Board with a request to adjourn – this is dealt with in the Determinations section below.

Determinations:

L2 Application de novo

1. SH sent two emails to the Board dated June 14, 2021 and these were read by me into the record for the benefit of MG who was present.
2. MG testified that the request to adjourn is a surprise to her and that she certainly did not want to adjourn the matter. She testified that about one-and-a-half weeks ago, a sink repair was completed at the rental unit by repair personnel and there was no flooding issue or complaint by the Tenants. Further, MG stated that she has never been informed of any issue with SH's mother's health, so she is unable to comment on that.
3. I considered both SH's emails and MG's submissions and determined that an adjournment was not be granted. The Landlord was not solicited by the Tenants for any consent to an adjournment and in fact the Landlord was not aware that the Tenants were seeking any kind of postponement of proceedings. MG also testified there was no flooding complaint or issue with the unit. The Tenants' request to adjourn was sent about a month's time prior to this hearing, and nothing further was provided by the Tenants to support their request, neither was anyone present at this hearing to make the request on behalf of the Tenants. I proceeded to hear the L2 application on an uncontested basis.
4. The Landlord served the Tenants with an N7 notice on March 17, 2020. The notice states that the Landlord is seeking the termination of the tenancy because of the claimed serious impairment to another person's safety in the rental unit or the residential complex – based on section 66 of the *Residential Tenancies Act, 2006* (the 'Act).
5. MG brought forth two witnesses who provided testimony concerning the claims in the N7 notice.
6. WIT1 has been a tenant since October 2019. Referencing her affidavit (exhibit LL#1), WIT1 testified about her encounters with the Tenants on February 22, 2020 and on February 25, 2020, which has left her worried for her ongoing safety.
7. Her accounts were as follows. On February 22, 2020, after approaching two people wandering on the property, SH identified herself nicely whereas GE became verbally abusive and came towards in a threatening way. SH interceded and stopped GE and WIT1 confirmed that GE never touched WIT1. WIT1 also stated that GE came by her unit the next day to apologize for his behaviour.
8. On February 25, 2020, WIT1 described how just before midnight, SH knocked on her unit door, looking to borrow some tin foil. WIT1 stated she locked her door to get the foil, returned and gave SH the requested foil. At that point SH left.
9. WIT1 testified that the Tenants always seem to be "on something" that affects their behaviour. WIT1 has never seen the Tenants using drugs, but she has heard from others that the Tenants deal drugs.
10. WIT2 and her family have been tenants in the building for the past 13 years. Referencing her affidavit (exhibit LL#2), WIT2 testified about the incident that happened around 1:30 am on February 8, 2021. WIT2 described hearing a loud banging noise followed by a

sound of glass breaking. The next morning, WIT2 stated she noticed the window to the rental unit was broken.

11. WIT2 testified that the Tenants seem to regularly fight with one another in the rental unit, yelling and screaming, which WIT2 and her family have heard on a number of occasions (no dates or times provided). They also come to WIT2's door quite regularly looking "for things". WIT2 described how she and GE yelled at one another on one occasion, and also relayed a story she heard about concerning the Tenants confronting another resident of the building ("a blond lady").
12. WIT2 expressed her concern for her and her family's safety.
13. MG submitted into evidence a third affidavit (exhibit LL#3), that of Keith (a.k.a Anton) Marcial. Mr. Marcial states he has been a resident in the building for the past 20 years. His affidavit describes the regular yelling and screaming by the Tenants, but no dates or times are given. Mr. Marcial states his ongoing concern for his safety due to the disturbing behaviour of the Tenants. Mr. Marcial was not present at the hearing and so he could not be examined on his affidavit. However, LL#2 is still contains valid uncontested evidence for me to consider hereto.
14. In the absence of testimony or evidence in respect of an actual situation when someone's safety was actually seriously impaired, I am not satisfied, on a balance of probabilities, that the Tenants' behaviour in the residential complex in this instance case seriously impaired or impairs the safety of themselves or other persons.
15. Stated another way, the issue before the Board is not whether the Tenants regularly make undue noise, have yelled/sworn at other residents in the building, or act strangely or break their own window, but rather whether their behaviour or conduct seriously impaired or impairs the safety of anyone in the rental unit or residential complex.
16. While I agree the Landlord may have shown more persuasively that the Tenants' actions of yelling and screaming and breaking a window have substantially interfered with other tenants' reasonable enjoyment, the Landlord's reasonable enjoyment or with the Landlord's lawful rights and interests, there is no N5 notice of termination served on the Tenants under section 64 of the Act, and so no basis to consider that type of claim here.
17. The threshold for establishing "serious impairment" under section 66 of the Act is a much higher one than for "substantial interference" under section 64. Under a section 66 claim, a landlord must establish that the effect of a tenant's actions threatens the wellbeing or physical integrity of another person to such a degree that termination of the tenancy is reasonable in order to ensure the safety of others.
18. Putting this into question form for this L2 application, have the Tenants' actions put someone at serious risk of physical harm? Was someone hit? Was someone threatened with a weapon? Was something thrown or waved closely at someone to hurt them? Not every risk of physical harm to another will meet the test, as the impairment of safety must be actual and serious. In this application, the one incident testified-to in the first-person was by WIT1 when she described how GE yelled at her and came at her; this

would be the closest incident in attempting to establish “serious impairment”. However, WIT1 confirmed that GE never touched her and in fact returned the next day to apologize for his actions.

- 19. The other testimonies about what the witnesses/affiants heard – such as the Tenants using or dealing drugs, or the Tenants confronting a blond lady – are simply hearsay accounts, with no dates and no specifics about those alleged incidents being proffered. I cannot consider or rely upon those accounts in any meaningful way for the application at bar.
- 20. Consequently, the L2 application before me cannot therefore succeed.

It is ordered that:

- 1. The L2 application is dismissed.

December 1, 2021
Date Issued

Toronto East-RO
2275 Midland Avenue, Unit 2
Toronto ON M1P3E7



Alex Brkic
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.

2021 CanLII 150072 (ON LTB)