



Order under Section 69
Residential Tenancies Act, 2006

File Number: TSL-12596-19
TST-13826-20

In the matter of: APT B, 2207 DANFORTH AVENUE
TORONTO ON M4C1K4

Between: Rodel Misa Landlords
Ji Youn Sung

and

Eugene Cornes Tenant

TSL-12596-19

Rodel Misa and Ji Youn Sung (the 'Landlords') applied for an order to terminate the tenancy and evict Eugene Cornes (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; because the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully caused undue damage to the premises and/or used the rental unit or the residential complex in a manner that is inconsistent with use as a residential premises and that has caused or can be expected to cause significant damage The Landlords has also applied for an order requiring the Tenant to compensate the Landlords for the damage; 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 Landlords or another tenant; 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; and because the Tenant has been persistently late in paying the Tenant's rent. The Landlords also claimed compensation for each day the Tenant remained in the unit after the termination date.

TST-13826-20

Eugene Cornes (the 'Tenant') applied for an order determining that Rodel Misa and Ji Youn Sung (the 'Landlords') or the Landlords' superintendent or the Landlords' agent harassed, obstructed, coerced, threatened or interfered with the Tenant and substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of the Tenant's household and because the Landlord failed to comply with section 20 of the *Residential Tenancies Act, 2006* by failing to maintain the rental unit.

These applications were heard by videoconference on February 2, 2021 and April 30, 2021. The Landlords, Rodel Misa, (RM) and Ji Youn Sung (JYS) attended the hearing along with the Landlords' Legal Representative, S. Pereira. The Tenant attended the hearing and was represented by D. English.

Preliminary Issue:

The Landlords sought consent of the Board to withdraw their N8 Notice for persistently late rent. The Tenant did not oppose the request.

Background:

1. The Tenant rents a unit on the second floor of the property with a commercial component on the main floor. The Tenant has lived in the rental unit for the past eleven years. There are two residential units on the second floor of the building.
2. The parties had a conciliatory relationship until the fall of 2019.
3. The Landlords are claiming the Tenant has substantially interfered with the Landlords and the Tenant is claiming the Landlords have substantially interfered with the Tenant and failed to maintain the rental unit.

Determinations:

Landlord Application:

4. The Landlord served the Tenant with a Notice to End your Tenancy for Causing Serious Problems in the Rental Unit or Residential Complex (N7) and a Notice to End your Tenancy for Interfering with Others, Damage or Overcrowding (N5). Both notices were issued on December 16, 2019 with different termination dates. The N5 Notice was voidable as it was the first N5 Notice.
5. The voidable date for the N5 Notice was December 23, 2019. The Landlord said the Tenant continued the conduct during the voiding period and failed to pay the damage amount claimed on the form. Therefore, I find the Tenant failed to void the notice.
6. The Tenant's Legal Representative argued the Landlords could not serve the Tenant with a first N5 and a N7 Notice at the same time because it would be confusing to the Tenant as the first N5 Notice is voidable and the N7 Notice is not voidable. The Tenant submitted several orders from the LTB to support his position.
7. I have reviewed Order TSL-93538-18 and several other similar decisions and find that it is reasonable to conclude the Tenant would be confused by receiving a N5 Notice authorizing the Tenant an opportunity to void the notice and save the tenancy and at the same time serving the N7 Notice were there is no opportunity to void and the Tenant must vacate. How would the Tenant know what to do especially when the attached Schedule A

to the notices are exactly the same and describe the same events and seek the same payment for damages.

8. Although the guidelines allow for the Landlords to serve several notices at the same time, it is important that while doing so the Landlord does not create confusion for the Tenant. In my view, giving a Tenant a voidable notice along with a non-voidable notice citing the same issues is confusing. As a result, I find that I must dismiss the Landlords' application.
9. Although I have dismissed the application, the Tenant should be advised that had the Landlord only filed the N5 Notice that the outcome may have been different. Given there has been no determination made on the merits of the Landlord's claim, the Landlord is not precluded from serving a new notice should they choose to do so.

The Tenant's Applications:

10. The Tenant filed both a T2 and a T6 application.

T6 Application

11. The Tenant said he complained to the Landlord about several maintenance issues, but the Landlord failed to address the issues in a timely manner. According to the Tenant, he eventually called by-law who came out and issued an order to the Landlords on February 21, 2020. The order required the Landlords repair or replace the bathroom vent fan, master bedroom door, master bedroom walls, repair the door closures to the front and rear entry doors, replace the rear stove burner and repair the glass oven door, replace the living room window glass, repair the heating system in the living room, fix the holes and crack in the ceiling throughout the dwelling, maintain and keep clean the common area hallway walls, flooring and ceiling and repair any holes or cracks in the common hallway. These repairs were to be completed by March 21, 2020.
12. According to the Tenant, the Landlord completed some of the work, but not all the work has been completed.
13. RM argued the work was not completed because not only did the Tenant refuse entry on several occasions the work was further complicated by Covid19 and that affected the Landlords' ability to do the work. However, the Landlords agreed to complete the work by June 30, 2021. The Landlords denied they were aware of any of the Tenant's issues until they received the City Order.
14. The Landlords said they had the hallway painted in 2019 but the Tenant damaged the walls afterwards. The Landlords did not see the Tenant cause any damage to the hallway walls.
15. The Tenant listed several other complaints in the T6 application, but the evidence provided was based on the issues outstanding in the City Order. So those will be the only issues addressed in this order. The Tenant is seeking a nominal abatement of \$500.00.

T2 Application:

16. The Tenant testified he believed the Landlord had changed the descriptors on the audio clips to mislead the Board. The Tenant said the dates of the files have been changed and this would imply that there was a fight on November 3, 2019 which the Tenant said did not happen that day.
17. T is the ex-girlfriend of the Tenant. The Tenant stated that T's ex-boyfriend broke into the unit on November 3, 2019 in the middle of the night. The Tenant said he was woken up by a man standing over the bed with a knife to his throat. The Tenant thought T was in the bathroom trying to protect herself. According to the Tenant police were called. The Tenant said that the damage to the unit door was caused by the break in and that there were some clothes and things thrown down the stairwell by T's ex-boyfriend. The Tenant denied causing any damage to his door.
18. The Tenant complained that the replacement door is hollow and there is no dead bolt which makes it easy to break into. On March 27, 2020 the Tenant said he used a credit card to gain access to the rental unit when he locked himself out. The new door the Landlord installed was not secure and he was concerned for his safety. It should be noted that the By-law officer who inspected the rental unit on February 21, 2020 did not find the entry door to the rental unit and the locking system required attention.
19. The Tenant stated the tenant next door ripped the Tenant's camera from the hallway on August 23, 2019. According to the Tenant it was the Landlords who asked him to get a better camera for evidence if he wanted the Landlords to do something about the tenant next door. The Landlords called no evidence to dispute this.
20. The Tenant said on August 28, 2019 he was advised by the Landlords that if he couldn't get along with the neighbour he would be evicted.
21. On September 6, 2019, the Tenant said T called bylaw because of the noise coming from the neighbour's unit. The Tenant denied it was he who was causing the noise and said T was the one who called bylaw on the tenant living in the unit beside him. Neither party called the bylaw officer to testify. The Landlords said they received a letter from the City about a noise complaint on September 6, 2019. The Landlords believed that the Tenant was the cause of the noise and that is why he was contacted.
22. On September 13, 2019, the Tenant provided a 12 second clip of a video of JYS in the hallway with her keys. It appeared she intended to find a key for the Tenant's apartment but fumbled the keys and dropped them. The Tenant was not home when this occurred. There was no evidence the Landlord entered the rental unit or tried to put a key in the lock. The Tenant is alleging the Landlord entered the rental unit that day. The Landlords denied entering the unit that day.
23. On October 15, 2019 the Tenant said the back door to the complex was hanging and the Landlord asked him to tighten the screws in the hinges to secure the door. The Tenant said he complied, but it didn't fix the problem. The Landlord eventually came on November 3, 2019 to fix the door. According to the Tenant, he felt that the Landlord's

conduct represented harassment. The Landlords were accusing him of causing the problems with the rear entry door except the Tenant denies using that door on a regular basis and did not cause any damage to the door and was simply reporting the problem to the Landlords.

24. On December 13, 2019 the Landlords sent an email to the Tenant asking him to remove his cameras. The Tenant said the email was contrary to the previous communication that he should buy better cameras. However, the Tenant eventually removed the cameras.
25. On December 16, 2019 the Tenant received a new N7, N8 and N5 Notice from the Landlord.
26. The Tenant said he was always receiving complaints about the garbage, but it was not his garbage. The Tenant said the tenant in the neighbouring unit was to take the garbage out on alternate weeks and he failed to do so. The Tenant said he would be blamed by the Landlords if the garbage built up.
27. The Tenant stated the Landlords changed the mailing address of the property from unit 1 and 2 to A and B and this affected the Tenant's mail. According to the Tenant he had to change all of his documents to indicate the correct address. The Landlord stated the change to A and B was to reflect the lease agreement the tenants had signed as the units had been incorrectly identified by units 1 and 2.

Findings:

28. I have reviewed all of the evidence presented at the hearing and given the vastness of the evidence I will not be referring to every piece in this order, however all of the evidence has been considered. Based on all of the evidence before me and on a balance of probabilities, I find the Landlords have failed to comply with section 20 of the *Residential Tenancies Act, 2006* by failing to comply with the Work Order from the City within the time allotted. As such the Landlord will be ordered to make the repairs.
29. Although the Tenant is requesting a modest abatement, I find that given the situation with Covid and given the Tenant was not always allowing entry, I find no abatement is warranted.
30. The Tenant was seeking an order to stop the Landlords from serving rent increase notices. I do not find the outstanding maintenance issues so egregious to warrant an order preventing the Landlords from serving notices of rent increase. Most of the issues that require attention are fairly minor in scope and minor maintenance issues do not rise to the level to warrant the request the Tenant is making. Therefore, this portion of the Tenant's claim is dismissed.
31. I am not convinced the Tenant has proven the Landlords have harassed him. I find the Landlords more likely than not were responding to complaints they received and as such communicated with the Tenant in such a way that it may have been annoying to the Tenant, but I do not find it rises to the level of harassment or substantial interference.

32. I find the Tenant's complaints for the most part where between the Tenant and the tenant living next door which resulted in a he said/he said scenario. The Landlords were responding to the complaints they received, and this resulted in notices being served on the Tenant and conversations with the Tenant. I do not find the Landlords harassed the Tenant nor do I find the Landlords interfered with the Tenant's reasonable enjoyment by serving termination notices on the Tenant. It appears the initial notice the Landlords served was flawed and subsequently the Landlords served additional notices to correct their error.
33. I do not find the Landlord entered the rental unit illegally on September 13, 2019. The video clip only shows 12 seconds where the Landlord is fumbling with the keys. The Landlord denied entering and the Tenant said he was not home at the time of the incident. There was no video submitted showing the Landlord had entered. Based on a balance of probabilities I find the Tenant has failed to prove the Landlord illegally entered the rental unit.
34. The Tenant alleges the Landlords changed the mailing address for the rental unit implying that it was to interfere with the Tenant. I find that the Landlords' were simply ensuring the lease agreement coincided with the numbering in the building. As a result, the Landlords changed the unit designation to mirror the lease agreement. I do not find that this conduct was harassing or interfered with the Tenant's reasonable enjoyment of the rental unit. The Tenant ought to have know his unit number by referring to his lease agreement.
35. The Landlords have the right to serve lawful notices to the Tenant and give notice to enter to affect repairs in the rental unit. Doing so in the normal course of business is not interference nor is it harassment.
36. I do not find the Landlords have interfered or harassed the Tenant by installing a door without a deadbolt. I find that the lack of a deadbolt is a maintenance issue and the Landlords will be ordered to install a deadbolt and provide a key to the Tenant.
37. Based on the reasons above, I must dismiss the Tenant's T2 application.


It is ordered that:

1. The Landlords' application is dismissed.
2. The Tenant's T2 application is dismissed.
3. The Landlord shall pay to the Tenant \$50.00* for failing to comply with section 20 of the *Residential Tenancies Act, 2006* and the City Order.
4. The Landlords shall make the following repairs on or before June 30, 2021, bathroom ceiling fan, master bedroom door needs adjusting in frame, repair all holes and cracks in the master bedroom walls and ceiling, repair door closures on front and rear entry doors, replace the stove burner, repair the window, fix the heating system in the living room, repair all walls and ceiling with in the rental unit, repair the walls and ceiling in the

common hallway and stairwell and clean the floor coverings in the common area hallway and stairwell.

5. The Landlords shall install a dead bolt lock on the Tenant's entry door to the rental unit on or before June 30, 2021 and provide the Tenant with a key.
6. The Tenant shall allow access to the rental unit with lawful notice and refrain from interfering with the Landlords and the repairs being completed.
7. If the Landlords do not pay the amount* set out in paragraph 3 of this order by May 25, 2021, then the Tenant shall deduct the amount for the rent for June 2021.

May 14, 2021
Date Issued



Lorraine Mathers
Member, Landlord and Tenant Board

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