



Order under Section 68
Residential Tenancies Act, 2006

File Number: TEL-15489-21

In the matter of: 304, 700 DUNLOP STREET WEST
WHITBY ON L1N1V5

Between: Canadian Mental Health Association

Landlord

and

Esther Moore

Tenant

Canadian Mental Health Association (the 'Landlord') applied for an order to terminate the tenancy and evict Esther Moore (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 Landlord has also applied for an order requiring the Tenant to compensate the Landlord for the damage; and 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.

This application was heard by teleconference on August 3, 2021.

Only the Landlord's representative F. Nobile (FN) and the Landlord's legal representative C. Aylwin attended the hearing.

Determinations:

Notices of termination

1. The Landlord served two N5 notices of termination on the Tenant. The first, voidable N5 notice is on the grounds of substantial interference and damage and alleges that the Tenant caused a fire on her balcony on September 9, 2019 and that this caused damage to the balcony. The voidable N5 notice gives a termination date of October 27, 2019.
2. The Landlord's second N5 notice is on the ground of substantial interference and alleges that the Tenant caused a fire on her balcony on September 9, 2019 and that this caused damage to the balcony. The second N5 notice further alleges that the Tenant has failed to pay for the cost of repairing the damage as of January, 2020.
3. A second, non-voidable N5 notice must contain a new allegation about an event or issue that happened or arose more than seven days and less than six months after the first N5

notice was delivered. The second N5 notice served by the Landlord only alleges that the Tenant failed to pay for the damage alleged in the first N5 notice. This is not a new allegation. It appears to be a way to circumvent the deadline at s.69(2) of the *Residential Tenancies Act, 2006* (the 'Act'), which provides that a Landlord has 30 days from the termination date to file an application based on a notice of termination. In this case, the first N5 notice had a termination date of October 27, 2019 and so if the Tenant did not void that notice the deadline for the Landlord to file the application was November 26, 2019. The application was filed in May 2020, so the Landlord cannot base their application on the first N5 notice.

4. For the reasons above, at the hearing I found the second N5 notice to be invalid and I found that the Landlord could not rely upon the first N5 notice.

Damage

5. The Landlord also claims compensation for the cost of repairing undue damage wilfully or negligently caused by the Tenant.
6. FN is an employee of the Landlord. FN testified that on September 9, 2019 she was contacted by the Whitby Fire Department and informed that a container of cigarette butts on the Tenant's balcony had started a fire.
7. FN testified that as a result of the fire the whole balcony was smoke damaged. The Landlord submitted photographs of the balcony showing smoke damage on the outside walls of the building/balcony and on the ceiling of the balcony.
8. The Landlord submitted an invoice dated October 7, 2019 indicating a cost of \$500.00 for cleaning and repainting the balcony and balcony ceiling.
9. Based on the Landlord's uncontested evidence, I find, on a balance of probabilities, that the Tenant caused a fire on her balcony on September 9, 2019 and that this fire caused damage to the balcony. I further find that the cost to repair this damage was \$500.00. I find that this is a reasonable cost for this repair.
10. The Landlord's legal representative submitted that the Landlord would be satisfied with an order requiring the Tenant to pay the amount owed in monthly instalments of \$100.00.

It is ordered that:

1. The Tenant shall pay to the Landlord \$500.00, which represents the reasonable costs of repairing the damage.
2. The Tenant shall also pay to the Landlord \$190.00 for the cost of filing the application.
3. The Tenant shall pay the amount owed as follows. In addition to her monthly rent, the Tenant shall make the following payments:
 - a) \$100.00 on or before December 1, 2021;

- b) \$100.00 on or before January 1, 2022;
- c) \$100.00 on or before February 1, 2022;
- d) \$100.00 on or before March 1, 2022;
- e) \$100.00 on or before April 1, 2022;
- f) \$100.00 on or before May 1, 2022; and
- g) \$90.00 on or before June 1, 2022

4. If the Tenant does not pay the Landlord the full amount owing on or before June 1, 2022, the Tenant will start to owe interest. This will be simple interest calculated from June 2, 2022 at 2.00% annually on the balance outstanding.



November 10, 2021

Date Issued

Renée Lang

Member, Landlord and Tenant Board

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