



**Order under Section 69  
Residential Tenancies Act, 2006**

**Citation:** KS 700 Bay Street Inc v Ghanem, 2024 ONLTB 16098

**Date:** 2024-04-26

**File Number:** LTB-L-014509-23

**In the matter of:** 809, 77 GERRARD ST W  
TORONTO ON M5G2A1

**Between:** KS 700 Bay Street Inc

Landlord

**And**

Abdelmoghny Ghanem  
Souzana Daher

Tenants

KS 700 Bay Street Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Abdelmoghny Ghanem and Souzana Daher (the 'Tenants') because:

- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another Tenants;
- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully or negligently caused damage to the premises;
- the Tenants or another occupant of the rental unit has committed an illegal act or has carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential complex;
- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully caused undue damage to the premises.

The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on January 3, 2024.

The Landlord's agent, Samuel Hui, the Landlord's legal representative, Martin Zarnett, the Tenants, and the Tenants' legal representative, Shaun Harvey, attended the hearing.

**Preliminary Issue Determinations:**

1. The Tenants raised a preliminary issue that the Landlord served an N5 and an N6 notice of termination for the same incident. The Tenants submit that this duplication of notices is confusing for the Tenants as one is voidable and one is not, and that further, the Tenants voided the N5 notice.
2. The Landlord does not dispute that they also served an N5 notice for the same incident, and that the Tenants voided that notice by making the required payment. The Landlord submits that the N5 notice is not before the Board and Interpretation Guideline 10 specifically allows for multiple notices to be served for the same incident. They also submit that the N5 contained other issues in addition to the incident that is the subject of the N6. They submit that there can be no confusion as there is only one notice before the Board. I received a copy of the N5 notice in post-hearing submissions to verify the contents of the notice as they relate to the parties' submissions.
3. The issue of confusion is assessed and determined at the time a notice is given to the Tenants, not at the time of the hearing. When a notice of termination is received, the Tenants must make decisions about voiding the notice or vacating the rental unit based on the information contained in the notice or notices; those decisions cannot be made with the benefit of information gained later, such as when the Landlord files an application or provides disclosure for a hearing.
4. Guideline 10 acknowledges that multiple notices may be issued, but cautions '...confusion to the tenant should be minimized. The Notices may be challenged on the basis that they are confusing and therefore defective. In the worst case, an application may be dismissed.'
5. I find that issuing two notices with identical allegations where one notice is voidable, and one is not, would likely confuse any reasonable tenant and cause the notices to be defective. In this case, however, the allegations on the N5 are not identical to those on the N6 because the N5 includes additional allegations. Additionally, it is open to the Landlord to allege that an act both substantially interfered with the Landlord's rights and was illegal.

Therefore, I find that the N6 notice is valid, and the application will proceed.

**Reasons and Determinations:**

6. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy in the application. Therefore, the application is dismissed.

7. On January 19, 2023, the Landlord gave the Tenant an N6 notice of termination. The notice of termination contains the following allegations: on October 21, 2021 the Tenants or occupants of the rental unit stole a remote control and sound system from the theater in the residential complex.
8. The community manager for the rental complex, Samuel Hui, testified for the Landlord. The rental complex is a 25-floor building with 210 units in downtown Toronto. Security camera footage which was entered into evidence showed two individuals entering the building's theatre room. Video from inside the room shows a cabinet door open, obstructing the view of what is going on behind the door, but showing a dangling cable when the individuals leave the room. One of the individuals is wearing a red poncho when entering the room, but when exiting the room, he is carrying the poncho wrapped around an object. After this incident occurred, the community manager inspected the theatre and found the sound system and remote missing from the cabinet which was in the video. I accept the Landlord's evidence and submission that the individuals in the video stole the sound system and remote.
9. I must determine two issues in this application; whether the thieves were the Tenants or their occupants or, if they were the Tenants' guests, whether they were permitted by the Tenants or occupants to commit an illegal act.
10. The Landlord believes that the man in the red poncho in the video is an authorized occupant of the rental unit. He was identified as such by a maintenance team member who viewed the video. The maintenance team member was not called to testify, and the Landlord's witness did not have further details about how the identification was made but speculated that the maintenance person recognized them from suite maintenance visits.
11. To the best of the Landlord's knowledge the Tenants are not personally occupying the unit and are instead subletting it. They allege that the two individuals in the video were unauthorized subtenants, although they acknowledge that the individuals are no longer occupying the unit. They believe the current occupant is Souzana Daher's son.
12. Souzana Daher's son, Majed Farhad, testified that he and his mother had been occupying the rental unit since 2019. His mother was in an accident during COVID, so she had a support person, Ashley, stay in the unit between February 2021 and some time in 2022. Majed Farhad's signature is on the lease assignment and he showed identification listing the rental unit as his address. He believes the individuals in the video were friends of Ashley and did not recognize them by name or sight. He denies that they were occupants of the rental unit. He recalls being told during the theft investigation that they may have entered the building using a key fob, or they may have followed someone through the door.
13. After he was informed of the theft, Majed asked Ashley to leave the unit.

14. I prefer the direct evidence of Majed Farhad to the untested hearsay evidence of the maintenance worker. I find that the thieves were not tenants or occupants of the rental unit. I accept that they were most likely friends or acquaintances of the support worker, Ashley.
15. I find the decision in *Musse v. 6965083 Canada Inc.*, 2021 ONSC 1085 at paragraph to be instructive:

Permission, like consent, involves a state of mind. It is the voluntary agreement that something occur. It involves knowledge of what is going to happen and a voluntary agreement that it be done.
16. Although I accept that the thieves were likely known to Ashley, there is no evidence before me that she was an accomplice in the theft or gave permission for them to commit the act. Similarly, there is no evidence before me to support an inference that Ashley permitted the illegal Act, such as that she had knowledge of their intentions or actions but acquiesced. Even if she allowed them entry to the building, which is not proven, granting entrance does not equate to granting permission to commit theft or any other crime.
17. The Landlord has not proven that the Tenants or their occupants have committed or permitted an illegal act in the residential complex.

**It is ordered that:**

1. The Landlord's application is dismissed.

**April 26, 2024**

**Date Issued**

15 Grosvenor Street, Ground Floor,  
Toronto ON M7A 2G6

**Dawn Carr**

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.