Order under Section 69
Residential Tenancies Act, 2006

Citation: LANARK COUNTY HOUSING CORPORATION v Fillion, 2023 ONLTB 65073
Date: 2023-09-27
File Number: LTB-L-007365-22

In the matter of: 107, 252 MOFFATT ST
CARLETON PLACE ON K7C3L1

Between: LANARK COUNTY HOUSING CORPORATION — Landlord

And

Mark Fillion — Tenant

LANARK COUNTY HOUSING CORPORATION (the 'Landlord') applied for an order to terminate the tenancy and evict Mark Fillion (the 'Tenant') 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.

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

This application was heard by videoconference on September 20, 2023.

The Landlord's agent, Kerri Mackenzie, the Tenant, and the Tenant's legal representative, Linda Tranter, attended the hearing. Barry Benedict (BB) attended the hearing as a witness for the Landlord.

Determinations:

1. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the application is dismissed.
2. On July 20, 2021, the Landlord gave the Tenant an N5 notice of termination (the 'N5').
3. The N5 alleges that the Tenant "tampered" with the visitor's parking sign on July 12, 2021 and July 13, 2021. I am not satisfied that this portion of the N5 complies with the legislative requirements as set out in *Ball* v. *Metro Capital Property*, [2002] O.J. No. 5931 ('*Ball*') which states that a notice should include particulars such as "dates and times of the alleged offensive conduct together with a detailed description of the alleged conduct engaged in by the tenant". In this case, the N5 does not state the time the alleged events occurred and "tampered" is not a detailed description of the alleged conduct. As a result, I find this portion of the N5 to be invalid.

4. The N5 also alleges that on July 20, 2021, "It was reported by members of the community that you have behaved in a manner that is aggressive, abusive and harassing towards them, causing unrest and fear within the community." I find this portion of the N5 also does not comply with *Ball* because it does not state a time and it does not provide a detailed description of the conduct allegedly engaged in by the Tenant. As a result, I find this portion of the N5 to be invalid.
5. The N5 states that on July 16, 2021, the Landlord gave the Tenant a lawful notice of entry for July 19, 2021 and that the Tenant posted a note on his door on July 16, 2021 stating that he was refusing entry to the Landlord. The Landlord argued that by posting the note on the door, the Tenant refused entry to the Landlord on July 19, 2021 and consequently substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord.
6. The Landlord's witness, BB, and the Tenant agreed that the Tenant ultimately permitted BB into the rental unit to complete the work for which the notice of entry was given, however neither of them could recall whether this occurred on July 19, 2021 or another date. I am not satisfied, based on the evidence before me on a balance of probabilities, that the Landlord has established that the Tenant actually refused entry on July 19, 2021. In the absence of an actual refusal to permit entry on July 19, 2021, I am not persuaded that posting the note on the door alone meets the threshold of ***substantial*** interference with the reasonable enjoyment or lawful right, privilege or interest of the Landlord. As a result, I find this portion of the N5 to be invalid.
7. The N5 also alleged that the Tenant drove his car on the lawn of the residential complex and parked his car in front of the maintenance garage on July 20, 2021. At the hearing, the Landlord conceded that driving on the lawn, although not acceptable, did not constitute substantial interference, however the Landlord argued that parking in front of the maintenance garage did constitute substantial interference.
8. BB testified that the Tenant parked his car in front of the maintenance garage at approximately 1:00 PM. He also testified that he did not know what time the Tenant removed his car, but that it was gone by 4:00 PM. He said that this incident did not interfere with the maintenance staff and that he felt the Tenant would move his car if he was asked to do so. While I can appreciate that the Landlord felt aggrieved by the Tenant's behaviour, I find the Tenant's behaviour to be minor and inconsequential rather than substantial. As a result, I find this portion of the notice to be invalid.
9. Although the Landlord's application is based on a second N5 notice, it must be dismissed because the first N5 notice is invalid in that it does not identify any substantial interference. The Landlord is not permitted to serve a second N5 notice without first serving a valid first N5 notice so the application must fail.

It is ordered that:

1. The Landlord's application is dismissed.

September 27, 2023
Date Issued

Richard Ferriss
Member, Landlord and Tenant Board

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