



Order under Section 69 Residential Tenancies Act, 2006

Citation: Gul v McIntyer, 2023 ONLTB 13863

Date: 2023-01-05

File Number: LTB-L-039458-22

In the matter of: Main Floor-214 Bellamy Road
Scarborough, ON M1J 2L6

Between: Lalmohmad Gul Landlord

And

Clement Artherton McIntyer Tenant

Lalmohmad Gul (the 'Landlord') applied for an order to terminate the tenancy and evict Clement Artherton McIntyer (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

Further, the Landlord applied for an order to terminate the tenancy and evict the 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 the act or omission occurred in the residential complex.

Further, the Landlord applied for an order to terminate the tenancy and evict the Tenant 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.

Further, the Landlord applied for an order to terminate the tenancy and evict the Tenant because the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex 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 Landlord also applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

The Landlord also applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

The Landlord also applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's conduct or that of another occupant of the rental unit or someone the Tenant permitted in the residential complex. This conduct substantially interfered with the Landlord's reasonable enjoyment of the residential complex or another lawful right, privilege or interest.

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 December 19, 2022.

The Landlord, the Landlord's Legal Representative Sajjad Najem and the Tenant attended the hearing. The Tenant spoke with Tenant Duty Counsel prior to the hearing.

Determinations:

Preliminary Motion – Invalid Notices

1. The Tenant made a preliminary motion to dismiss the Landlord's applications as both the N4 and N7 Notices of Termination served upon the Tenant did not properly identify the rental unit as required under s. 43(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act').
2. The Tenant submitted that the unit should be identified as "Main Floor" and not simply as 214 Bellamy Road in Scarborough. The Tenant submitted that this is because the residential complex, which is a house, also has a basement unit. I note that both notices that were served upon the Tenant by the Landlord's Legal Representative included letters that identified the unit as "upper level".
3. The Landlord's Legal Representative submitted that the Tenant is before the Board, knows what unit he lives in and is fully cognizant of the issues being raised in the application. Further, the Landlord's Legal Representative requested that the notices be amended to reflect the proper unit or an adjournment so that he could properly reflect the unit in a new set of notices.
4. The adjournment request was denied as well as the request to amend the notice as there is no authority under the Act to amend a notice of termination.
5. In TSL-75466-19 (Re), 2016 CanLII 71279, the member in that matter considered s. 212 of the Act in considering whether substantial compliance with the Act respecting the contents of forms, notices and documents is sufficient.
6. The member in that matter found that while the application of s. 212 to situations of non-compliance with non-mandatory requirements of the Act may be appropriate, a parallel application of that section to a mandatory legislative requirement such as the one found under s. 43(1)(a) of the Act amounts to an error in law and could not have been an exercise contemplated by the drafters of the legislation, which could lead to absurd results.
7. The proper identification of the unit is important, especially in an application for the termination of the tenancy. I agree with the member in TSL-75466-16 where they state that, "*the requirement that the unit be correctly identified, seeks to eliminate, or at least significantly reduces the possibility of confusion in the mind of the tenant*", as well as the sheriff who may be tasked with conducting the eviction.

8. As such, the Landlord's notices are invalid, and the applications for termination of tenancy are dismissed.
9. That said, the Landlord's Legal Representative decided to proceed with the application for the rental arrears and the outstanding utility costs. The Landlord's Legal Representative decided not to proceed with the remaining damage claims and submitted that those claims would be included in a subsequent application based on new notices.
10. As of the hearing date, the Tenant was still in possession of the rental unit.
11. The lawful rent is \$1,500.00. It is due on the first day of each month.
12. The Tenant has paid to the Landlord \$9,000.00 since the application was filed.
13. The rent arrears owing to December 31, 2022 are \$1,500.00.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. The Landlord is also claiming outstanding utility costs in the amount of \$194.56, which the Tenant agrees he owes. This amount will also be ordered.

It is ordered that:

16. The Tenant shall pay to the Landlord \$1,686.00. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application.
17. The Tenant shall also pay to the Landlord \$194.56, which represents the reasonable out-of-pocket expenses the Landlord has incurred as a result of the unpaid utility costs.
18. The total amount the Tenant owes the Landlord is \$1,880.56.
19. If the Tenant does not pay the Landlord the full amount owing on or before January 16, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 17, 2023 at 5.00% annually on the balance outstanding.

January 5, 2023

Date Issued

Jagger Benham
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

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

