

Order under Section 69
Residential Tenancies Act, 2006

File Number: TSL-20859-21

In the matter of: BASEMENT, 32 WOODBURY ROAD
ETOBICOKE ON M8W1X6

Between: Steven Murray
Grace Van Wissen

and

Katherine O'Gorman

I hereby certify this is a
true copy of an Order dated

September 1, 2021



Landlord and Tenant Board

Landlords

Tenant

Steven Murray (SM) and Grace Van Wissen (GVW) (the 'Landlords') applied for an order to terminate the tenancy and evict Katherine O'Gorman (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 Landlords or another tenant; because the Tenant 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; 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; 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 also applied for an order requiring the Tenant to compensate the Landlords for the damage. The Landlords also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by teleconference on April 20, 2021 and on June 4, 2021.

The Landlords, the Landlords' legal representative A.Dos Reis, the Tenant, and the Tenant's legal representative E. Leibovitch-Opar attended the hearing on both hearing dates. Kayla Subica (KS) and Kris Mattic (KM) testified on behalf of the Landlords. The Landlords also testified on their own behalf. The Tenant testified on her own behalf.

Determinations:*Substantial interference*

1. The residential complex is a house. The rental unit is the basement of the house and two other tenants, KS and KM, live on the two upper floors of the house.

2. The Tenant moved into the rental unit in July 2018. KS and KM moved into the upper unit of the house on October 31, 2020. KS testified that on November 1, 2020, while KS and KM were sitting on the deck at the back of the house, the Tenant approached them and confronted them with foul language, including asking "who the fuck are you" and "who the fuck is living here." KS testified that she asked the Tenant her name, to which the Tenant responded "you already know my fucking name." KS testified that she introduced herself and the Tenant then asked "do you even fucking live here." KS testified that the Tenant then said she was "wasted" and that she has "the best fucking drugs if you need any." KS testified that she and KM then went inside their apartment.
3. KS testified that later that day, she and KM could hear the Tenant in the rental unit screaming "I'm never leaving" and "who the fuck is that bitch." KS testified that they could hear loud music, singing and banging.
4. KS testified that later that night she heard the side door to the house slamming and then the Tenant came to the upper unit door and banged on it. KS and KM ignored it. KS testified that the Tenant came back several times to bang on their door, and then, when KS and KM relented and opened the door, the Tenant accused them of touching her bike lock then she went back to the rental unit and screamed "I don't trust you" and "I hope they like karaoke."
5. KM testified as to the events of November 1, 2020 as well. His testimony was less detailed but was consistent with that of KS.
6. The Landlords filed copies of text messages sent to them by the Tenant on November 1, 2020. In these texts the Tenant expresses anger at the presence of the upstairs tenants, especially on the driveway, and accuses them of looking into her windows. The Tenant also made various threats, including that if anyone walks down the driveway again she will spray them with a fire extinguisher and that she would be extremely protective of her space and "if someone dies I won't care."
7. At the hearing the Tenant did not deny any of the events of November 1, 2020. The Tenant testified that she was unhappy, she was concerned about her privacy, and she was sufficiently intoxicated that she could not remember parts of that day.

N5 notice not voided

8. The Landlords served an N5 notice of termination ('N5 notice') on the Tenant on February 21, 2021 on the ground of substantial interference with reasonable enjoyment. This was a first, voidable notice and so it indicated that the Tenant could void the notice by correcting the behaviour complained of in the seven days following delivery of the notice. The voiding period for the N5 notice was February 22 to February 28, 2021, inclusive.
9. KS testified that shortly after midnight on February 23, 2021, she was in bed when she heard loud singing and banging from the rental unit. The Landlords submitted an email that they received from KS in April 2021 setting out a log of disturbances the upstairs tenants had experienced from the rental unit. This log, drafted by KS, includes an entry

for February 23, 2021 stating that at 12:06am KS heard loud singing in the rental unit and that from 12:20 am to 12:34 am she heard loud banging coming from the rental unit.

10. The Tenant testified that she did not remember what happened the night of February 23, 2021, that she does not know what the upper tenants are talking about, that she might have been singing while listening to headphones, and that she denies making the noises complained of.
11. I find, on a balance of probabilities, that the Tenant substantially interfered with the upper tenants' enjoyment of the premises on February 23, 2021 by singing loudly in the rental unit late at night. KS's testimony was clear and consistent. It was not only internally consistent but also was consistent with her noise log. The Tenant's testimony was internally contradictory. She did not remember that night, but she also denied making these noises, and she also acknowledged singing with her headphones on. Further, based on her own testimony it appears more likely than not that the Tenant was reckless with respect to whether she would disturb the upper tenants: while her headphones were on it would be difficult to gauge how loudly she was singing. This calls into question her denial of making any of the noises complained of because at the time she may have impaired her own assessment of her noise.

12. For the reasons above, I find that the Tenant did not void the N5 notice.

Serious impairment of safety

13. It is uncontested that late on January 6, 2021 the Tenant left a pot cooking on the stove, then the contents of the pot caught fire, causing a large amount of smoke and necessitating the attendance of the local fire department.
14. The Tenant testified that she had fallen asleep while she was cooking. She testified that she awoke to the fire alarm, she put out the fire, and she called 911.
15. No damage was done by the fire or smoke and no one was injured.
16. A determination of whether a tenant seriously impaired the safety of another person does not require a finding that actual harm was done. It is sufficient to find that the tenant put people in the residential complex at realistic risk of serious injury. In this case, the Tenant's negligence in falling asleep while cooking late at night put the other tenants in the house at realistic risk of serious injury or death. I therefore find that this incident constitutes a serious impairment of safety of other persons in the residential complex.

Other grounds of termination

17. Given the above, it is not necessary to make determinations on the several other allegations and grounds for termination advanced by the Landlords.

Section 83

18. The Tenant testified that she has a mental illness. In support of this testimony she filed an email dated May 29, 2021 from a psychiatrist in another country with whom she had two online sessions. The email states that the Tenant has an unstable mood disorder and recommends treatment. The email provides no further details about the Tenant's symptoms or prognosis.
19. The Tenant testified that her mental illness causes the following problems: difficulty sleeping, rapid cycles of highs and lows, inability to be logical, inability to control outbursts and negative communications, inability to control reactions. The Tenant also testified that she gets "nasty" when she is threatened.
20. Under cross-examination, the Tenant testified that she is unable to control herself in her communications with her employer (she said she regularly yells at him but he understands) but she is able to control herself in communications with clients and so her disability does not affect her employment. When asked about why she is able to control herself with clients and not with the Landlords she responded that the Landlords have not been properly maintaining the property.
21. Also under cross-examination, the Tenant was asked about an incident on March 7, 2019 when she called the Landlords at 2:00 am. The Tenant recalled that she called the Landlords because she had lost her keys. The Landlords had testified that the Tenant had yelled at them that night on the phone. The Tenant did not remember yelling at the Landlords but she did remember that GVW was very angry and rude to her. When asked if she herself would have been bothered by getting a call from the Landlords at 2:00 am, the Tenant testified that she "would likely be OK with it."
22. The Tenant's evidence connecting her disability to her conduct was her own testimony, as the medical document does not provide details as to symptoms or barriers that arise from the Tenant's mental illness. I find the Tenant's testimony about her disability to lack credibility. I say this because although she stated that she lacks control over her reactions, she can control her reactions when she is communicating with clients at work. Further, it is difficult to reconcile her testimony that she would be "OK" with a late night call from her Landlords with her testimony about the symptoms of her mental illness. I therefore cannot find, on a balance of probabilities, that the Tenant's disability played a role in her conduct on November 1, 2021.
23. Even if the Tenant's evidence about her symptoms and their effect on her conduct was credible, it does not establish a connection between her disability and the fire she caused on January 6, 2021.
24. At the hearing, the Tenant expressed remorse for her conduct on November 1, 2020 and for the text messages that she sent the Landlords on that date. I note that there was no evidence that the Tenant had expressed remorse prior to the hearing.
25. KS testified that on April 12, 2021, when she was doing some yard work at the front of the house and looking something up on her phone to do with gardening, the Tenant started

yelling and swearing at her. The Tenant testified that she saw KS on the driveway with someone else and that KS had her phone up. She also testified that she did not yell at KS. It is more likely than not that there was in fact an incident that day and that it was precipitated by the Tenant's perception that KS was doing something malicious with her telephone. I say this because the Tenant's representative asked KS in cross-examination if she was pointing her phone into the Tenant's unit on April 12, 2021. There would be no reason to ask this question if the Tenant was not under the impression that KS had been invading her privacy in this way. Further, the Tenant had admitted to a profanity-laced confrontation of the upstairs tenants on November 1, 2020 and she had testified that she was initially angry on that day because "people were looking in her windows" (no evidence was given as to who was doing so).

26. The Landlords and the upper tenants gave testimony as to a number of other incidents and problems caused by the Tenant, most of which were denied by the Tenant. One incident that was not denied by the Tenant is that on November 5, 2020 she turned off the electricity to the whole house using the breaker box (to which she has access in the basement). The Tenant testified that the upper tenants were playing their television very loudly, she banged on her ceiling in response, and then she turned off the electricity to the house because her space heater was not working. She testified that she turned the electricity back on immediately. She testified that she had no idea that turning the electricity off to the whole house would affect the upstairs tenants. She testified that she did not remember if she tried any other way to fix the space heater, like plugging it into a different outlet. The Tenant denied pulling the breaker as a response to the noise issue.
27. Even if the Tenant's testimony about the breaker issue is taken at face value, her response to excessive noise upstairs was to bang on the ceiling. This is not an appropriate response. Further, it is difficult to give any credibility to the Tenant's denial that the breaker issue had nothing to do with the noise. This incident took place five days after the Tenant confronted the upstairs tenants in very aggressive ways when she perceived that they (or someone else) had been looking in her windows and that they had moved her bicycle. The Tenant's reaction to these perceived slights was grossly disproportionate. It seems more likely than not that the incident with the breaker, five days later, was a similarly disproportionate reaction to the alleged noise by the upstairs tenants.
28. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until September 30, 2021 pursuant to subsection 83(1)(b) of the Act. The problems with this tenancy appear to be persistent and irremediable. There was insufficient evidence to connect the Tenant's conduct to her disability and so it is not appropriate to deny eviction on this basis. We are still in the midst of the COVID-19 pandemic and this complicates anyone's search for new living accommodations. In postponing the eviction to September 30, 2021 I have also considered the Tenant's disability.

Damage

29. In their application, the Landlords claim \$600.00 in compensation for damage caused by the Tenant. The Landlords gave no evidence at the hearing to support that the Tenant caused any damage to the rental unit or residential complex and they also gave no evidence to support the cost to repair damage. Based on the lack of evidence, I cannot find that the Tenant caused any damage and so there will be no order requiring her to pay compensation for damage.

It is ordered that:

1. The tenancy between the Landlords and the Tenant is terminated, as of September 30, 2021. The Tenant must move out of the rental unit on or before September 30, 2021.
2. The Tenant shall pay to the Landlords \$30.38 per day for compensation for the use of the unit from October 1, 2021 to the date the Tenant moves out of the unit.
3. The Tenant shall also pay to the Landlords \$186.00 for the cost of filing the application.
4. If the Tenant does not pay the Landlords the full amount owing on or before September 12, 2021, the Tenant will start to owe interest. This will be simple interest calculated from September 13, 2021 at 2.00% annually on the balance outstanding.
5. If the unit is not vacated on or before September 30, 2021, then starting October 1, 2021, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or after October 1, 2021. The Sheriff is requested to expedite the enforcement of this order.



September 1, 2021

Date Issued

Renée Lang
Member, Landlord and Tenant Board

Toronto South-RO
15 Grosvenor Street, 1st 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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on April 1, 2022 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.