

File No. CEL-02484-21-RV

Ontario Landlord and Tenant Board Decisions

Ontario Landlord and Tenant Board

Panel: Greg Joy, Member

Decision: May 30, 2022.

File Number: CEL-02484-21-RV

2022 LNONLTB 4

Order under Section 21.2 of the Statutory Powers Procedure Act, and the Residential Tenancies Act, 2006 IN THE MATTER OF: 410, 50 EGLINTON AVENUE W MISSISSAUGA ON L5R3P5 Between Blair Feltmate, Landlord, and Akram Mansour, Sanaa Mansour, Tenants

(21 paras.)

Review Order

1 Blair Feltmate (the 'Landlord') applied for an order to terminate the tenancy and evict Akram Mansour and Sanaa Mansour (the 'Tenants') because they, another occupant of the rental unit or someone they permitted in the residential complex have substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant; and because the number of persons living in the unit on a continuing basis is more than permitted because the number of persons living in the unit on a continuing basis is more than permitted by health, safety or housing standards..

2 This application was resolved by order CEL-02484-21 issued on January 5, 2022.

3 On February 4, 2022, the Tenants requested a review of the order. On March 30, 2022 that request to review was denied.

4 On April 8, 2022 the Tenants made a second request to review the order. Landlord and Tenant Board Rule 29.17 states that the Landlord and Tenant Board will not consider a further request to review the original order or the review order from the same requestor. On April 11, 2022, Member Wickett used her discretion to waive the Rule and directed this matter to a review hearing.

5 Although the issues raised in the second request to review could and should have been raised in the first request to review, the request was heard at the direction of Member Wickett.

6 The request was heard on May 25, 2022. The Landlord, represented by Madelaine McKenzie, and the Tenant Akram Mansour, represented by Varthan Arul, attended the hearing.

Determinations:

7 1. The Landlord served the N5 notice on the Tenants for two reasons. The Landlord claims the Tenants have substantially interfered with his lawful right, privilege or interest, and because the number of persons living in the unit on a continuing basis is more than permitted by health, safety or housing standards.

8 2. I will first address the issue of the number people residing in the rental unit. The hearing order issued on January 5, 2022, finds that the Tenants are living in a rental unit that has more people than permitted because the number of persons living in the unit on a continuing basis is more than permitted by health, safety or housing

standards which contravenes subsection 67(1) of the *Residential Tenancies Act*. This finding is based on a by-law of the Condominium Corporation.

9 3. Section 67(1) of the Act is based on a violation of health, safety or housing standards required by law. At this review hearing the Landlord submits that the municipal by-law governing this rental unit provides limitations on the number of people permitted to reside in a dwelling.

10 4. The Tenant's representative submits that the square footage of the rental unit is calculated to include the kitchen. This was confirmed by a reading of the by-law. It is the position of the Landlord's representative that the square footage required for five people to reside in this rental unit is greater than the square footage required.

11 5. There was no independent verification of the square footage of the rental unit presented at the hearing. As a result, I cannot determine if the square footage meets the requirements of the by-law of the municipality. Therefore, I cannot determine that the Tenant's are in violation of section 67(1) of the Act. I am also not satisfied that a breach of the by-law of the Condominium Corporation is a violation of health, safety or housing standards required by law. As such, I find the application cannot succeed on the basis of the number of persons living in the unit on a continuing basis is more than permitted by health, safety or housing standards.

12 6. The second reason to be addressed is whether the number of people living in the rental unit substantially interferes with the Landlord's lawful right, privilege or interest.

13 7. The Landlord cites by-law 10.2 of the Condominium Corporation regarding Occupancy. Maximum occupancy for each unit based on the by-law, is based on the occupancy load determination in the Ontario Building Code as prescribed in [O. Reg. 403/97](#). That being two (2) persons per sleeping room in the dwelling unit.

14 8. The Landlord also points to the Guide to Living at the Esprit, which confirms that owners will restrict occupancy to not more than the respective number of tenants as two persons for a one-bedroom unit and five in a two-bedroom unit.

15 9. When the Tenants moved into the rental unit in 2011, they did not have children. They now have three children aged 8, 10 and 11 years of age. As such there are five people living in this one-bedroom unit.

16 10. When owners or tenants choose to live in a condominium there is a reasonable expectation that they will comply with the by-laws as set out by the Condominium Corporation. The question is whether these tenants, by not complying with the by-laws of the Condominium Corporation, are substantially interferes with the Landlord's lawful right, privilege or interest.

17 11. An owner of a condominium who has tenants who are not complying with the by-laws of the Condominium Corporation, may face consequences from the Corporation if the situation is not remedied. In this case the Corporation has warned the owner but has not taken action against the owner because the owner is attempting to remedy the situation.

18 12. Order CEL-02484-21 issued on January 5, 2022, finds in paragraph 7, that the Tenants made it clear at the hearing that they have no intention of complying with the by-law.

19 13. I find the Tenants violation of the by-law and the consequences to the Landlord, are substantially interfering with the Landlord's lawful right, privilege or interest. Therefore, I find the tenancy shall be terminated based on the notice served on the Tenants and their failure to remedy the issue.

20 14. In determining relief under section 83 of the Act, I find it fair to delay the termination of the tenancy. The Tenants have resided in the rental unit since 2011. They have three children, one of whom is autistic. Testimony shows that the Condominium Corporation will not take action against the Landlord if the Landlord is taking reasonable steps to address the violation of the by-law. Under the circumstances, I find it fair to delay the lifting of

the stay on order CEL-02484-21 issued on January 5, 2022 until August 31, 2022 to provide the Tenants additional time to vacate the rental unit.

21 It is ordered that:

1. The request to review order CEL-02484-21 issued on January 5, 2022 is denied. The order is confirmed.
2. The interim order issued on April 11, 2022 is cancelled. The stay of order CEL-02484-21 is lifted on August 31, 2022.

May 30, 2022

Date Issued

Greg Joy
Member, Landlord and Tenant Board

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