

Order under Section 69
Residential Tenancies Act, 2006

File Number: TSL-01010
TST-00092
TST-00096

In the matter of: 901, 40 Scollard St
Toronto ON M5R 3S1

Between: Chris Cebula Landlord

and

John Davidson Tenant

Chris Cebula (the 'Landlord') applied for an order to terminate the tenancy and evict John Davidson (the 'Tenant') because he, another occupant of the rental unit or someone he permitted in the residential complex has wilfully or negligently caused undue damage to the premises. The Landlord has also applied for an order requiring the Tenant to compensate the Landlord for the damage; and because he, another occupant of the rental unit or someone he 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 (TSL-01010).

The Tenant applied for an order determining that the Landlord or the Landlord's agent substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of his household. The Tenant also applied for a reduction of the rent charged for the rental unit due to a reduction or discontinuance in services or facilities provided in respect of the rental unit or the residential complex (TST-00092/TST-00096).

The applications were heard in Toronto on June 6, October 1, 2, and November 5, 2007.

The Landlord and the Tenant attended the hearing. The Landlord was represented by Alistair Trent and Joseph Kary appeared on behalf of the Tenant.

Determinations:

1. The Tenant or person permitted in the residential complex by the Tenant has wilfully or negligently caused undue damage to the rental unit by smoking cigarettes in the unit, thereby making the unit smell of cigarette smoke.
2. The Landlord has incurred or will incur costs of \$10,958.85 to repair the damage or replace property that was damaged and cannot be reasonably repaired.

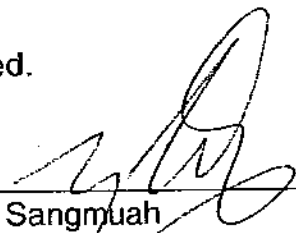
3. Smoking in the unit by the Tenant or a person permitted in the residential complex by the Tenant substantially interferes with a lawful right, privilege or interest of the Landlord the other tenant.
4. The Tenant further substantially interfered with the Landlord's lawful right to sell the rental unit by obstructing the Landlord's efforts to show the unit to prospective buyers.
5. The Landlord collected a rent deposit of \$2,000.00 from the Tenant and this deposit is still being held by the Landlord.
6. Interest on the rent deposit is owing to the Tenant for the period from July 14, 2006 to March 23, 2007
7. The Tenant did not correct the problem within the time period set out in the Notice of Termination.
8. The tenancy was terminated on December 28, 2007, pursuant to Order TSL-06299.
9. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated, effective December 28, 2007.
2. The Tenant shall pay to the Landlord \$10,000.00, which represents the reasonable costs of repairing the damage or replacing the damaged property.
3. The Tenant shall also pay to the Landlord \$150.00 for the cost of filing the application.
4. The Tenant shall also pay to the Landlord \$65.75 per day for compensation for the use of the unit from December 29, 2007 to the date he moves out of the unit.
5. If the Tenant does not pay the Landlord the full amount owing on or before March 7, 2008, he will start to owe interest. This will be simple interest calculated from March 8, 2008 at 6.00% annually on the balance outstanding.
6. If the unit has not been vacated, the Landlord may file this order immediately with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
7. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after February 25, 2008.

8. The Tenant's T2 and T3 applications are dismissed.

February 25, 2008
Date Issued



Egya Sangmuah
Member, Landlord and Tenant Board

Toronto South Region
2nd Floor, 79 St. Clair Ave. E
Toronto ON M4T 1M6

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 June 29, 2008 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.

REASONS

In the matter of: 901, 40 Scollard St
Toronto ON M5R 3S1

Between: Chris Cebula Landlord

And

John Davidson Tenant

Reasons to Order TSL-01010/TST-00092/TST-00096 issued on February 25, 2008 by Egya Sangmuah.

The Landlord applied for an order to terminate the tenancy and evict the Tenant because he, another occupant of the rental unit or someone he permitted in the residential complex has wilfully or negligently caused undue damage to the premises. The Landlord has also applied for an order requiring the Tenant to compensate the Landlord for the damage; and because he, another occupant of the rental unit or someone he 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 (TSL-01010).

The Tenant applied for an order determining that the Landlord or the Landlord's agent substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of his household. The Tenant also applied for a reduction of the rent charged for the rental unit due to a reduction or discontinuance in services or facilities provided in respect of the rental unit or the residential complex (TST-00092/TST-00096)

The applications were heard in Toronto on June 6, October 1, 2, and November 5, 2007.

The Landlord and the Tenant attended the hearing. The Landlord was represented by Alistair Trent and Joseph Kary appeared on behalf of the Tenant.

Undue Damage by Smoking in the Rental Unit

The Landlord alleged that the Tenant or someone he permitted in the residential complex has wilfully or negligently caused undue damage to the premises. Section 62 of the *Residential Tenancies Act, 2006* (the 'Act') provides that:

62. (1) A landlord may give a tenant notice of termination of the tenancy if the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex wilfully or negligently causes undue damage to the rental unit or the residential complex.

The Tenant raised a preliminary objection with respect to what falls within the definition of "rental unit". He argued that a rental unit does not include furnishings, such as drapes. The Landlord relied on *Pajelle Investments Ltd. v. Herbord*, [1976] 2 S.C.R. 520 where the Supreme Court of Canada rejected a narrow interpretation of the words "rented premises". The Court held that:

The words "rented premises" are not defined in the statute. I am of the opinion that they must be interpreted in each of the sections to accord with the provisions of the section and with the purpose thereof. In my opinion a sound construction would be that the words "rented premises" have a broader connotation than a mere physical space, and encompass not only that physical space but what the tenant is entitled to either under the terms of the written lease or the implied tenancy agreement, and I point out that counsel for the appellant in its factum referred to such matters as a air-conditioning and use of the sauna bath and swimming pool as "imposed by collateral agreement."

Another preliminary issue is whether the damage alleged, the smell of cigarette smoke, constitutes "damage" to the rental unit within the meaning of subsection 62(1) of the Act. The Tenant contended that the rental unit has not been blackened or discoloured by smoke and the mere smell of cigarette smoke does not constitute "damage" to the rental unit. The Landlord for her part argued that the smell of cigarette smoke changes the character of the rental unit, making it no longer a non-smoking furnished luxury accommodation. This change, the Landlord submitted, constitutes damage.

In interpreting the provision of the Act, I am guided by the Supreme Court of Canada's decision in *Rizzo Shoes v. Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27. On behalf of the Court, Iacobucci J. wrote:

21. Although much has been written about the interpretation of legislation (see, e.g., Ruth Sullivan, *Statutory Interpretation* (1997); Ruth Sullivan, *Driedger on the Construction of Statutes* (3rd ed. 1994) (hereinafter "*Construction of Statutes*"); Pierre-André Côté, *The Interpretation of Legislation in Canada* (2nd ed. 1991)), Elmer Driedger in *Construction of Statutes* (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

With respect to what forms part of a "rental unit, the relevant definitions under the Act are:

"rent" includes the amount of any consideration paid or given or required to be paid or given by or on behalf of a tenant to a landlord or the landlord's agent for the right to occupy a rental unit and for any services and facilities and any privilege,

accommodation or thing that the landlord provides for the tenant in respect of the occupancy of the rental unit, whether or not a separate charge is made for services and facilities or for the privilege, accommodation or thing, but "rent" does not include,

- (a) an amount paid by a tenant to a landlord to reimburse the landlord for property taxes paid by the landlord with respect to a mobile home or a land lease home owned by a tenant, or
- (b) an amount that a landlord charges a tenant of a rental unit in a care home for care services or meals; ("loyer")

"rental unit" means any living accommodation used or intended for use as rented residential premises, and "rental unit" includes,

- (a) a site for a mobile home or site on which there is a land lease home used or intended for use as rented residential premises, and
- (b) a room in a boarding house, rooming house or lodging house and a unit in a care home; ("logement locatif")

The Tenant rightly noted that in *Pajelle Investments*, the Supreme Court considered words that were not defined in the Act in question. The Residential Tenancies Act provides a definition for the words "rental unit". In my view, the definition is broad enough to include furnishings in a rental unit. The words "any living accommodation" indicates that the Act contemplates different types of living accommodation. It could be furnished accommodation or unfurnished accommodation. The definition of rental unit also indicates that the rental unit may not be rented in isolation and may come with a bundle of services or things that the Landlord may provide for the tenant in respect of the occupancy of the rental unit. Finally, excluding the furnishings of a furnished rental unit from the application of subsection 62(1) would not accord with the objectives of the Act. One of the objectives of the Act is to balance the rights and responsibilities of residential landlords and tenants. In light of this object of the Act, it does not make sense to exclude property provided by the Landlord to facilitate the occupancy of a furnished rental unit from the purview of subsection 62(1). Such an interpretation would not encourage responsible use on the part of tenants and deny landlords a remedy in the event of damage. The Legislature intended the Act to be a comprehensive framework for regulating residential tenancies.

Concerning whether the smell of cigarette smoke constitutes damage, a useful starting point is the ordinary meaning of the word. The Encarta Dictionary provides two meanings: (1) physical injury that makes something less useful, valuable, or able to function and (2) a harmful effect on somebody or something. The Tenant focuses on visible damage. However, damage also connotes impairment of a thing. In the context of subsection 62(1) of the Act one must consider the purposes for which the rental unit was intended to be rented (*Quann v. Pajelle investments* (1975) 7 O.R. (2d) 769)). For a rental unit intended to be used as a non-smoking catering to a clientele that, for various reasons, does not want to live in rental units that smell of cigarette smoke, if smoking in the unit causes a persistent smell of smoke in the unit, the function of the unit as a non-smoking unit would be impaired. In this context, the persistent smell of cigarette smoke would constitute damage within the meaning of subsection 62(1) of the Act.

Substantial Interference with another Legal Right, Privilege or Interest of the Landlord

The relevant provisions with respect to this issue are:

4. Subject to section 194, a provision in a tenancy agreement that is inconsistent with this Act or the regulations is void.

64. (1) A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.

The Landlord submitted that a lease agreement can create a legal interest which, if violated, would give rise to eviction under section 64 of the Act. The preconditions for eviction are that the lease provision must not be prohibited or illegal and the breach of the provision must constitute substantial interference in the sense of having a real and tangible effect on the Landlord. The Landlord relies on *Sky-Top Developments v. Linton* (TEL-01294-RV).

The Landlord argued that this is a proper case for eviction under section 64 because the Tenant agreed to a no smoking clause in his lease, a clause that is not prohibited by law or inconsistent with the Act and Regulations. The Landlord further submitted that in this case the breach alleged by the Landlord has negatively affected a tangible interest of the Landlord. The Landlord stressed that the specific circumstances of the case support a finding that the Tenant has substantially interfered with a tangible economic interest of the Landlord. The rental unit is a furnished unit, with furnishings and broadloom provided by the Landlord. The furnishings and broadloom have a propensity to absorb contaminants from smoke and it is difficult to remove such contaminants. The Landlord also targets executives and similar individuals needing short-term accommodation and these individuals insist on non-smoking accommodation. Thus, smoking in the unit would reduce its marketability until the "remnants of smoke" can be permanently eradicated.

The Tenant contended that a tenancy can only be terminated in accordance with the Act and that a tenant cannot be evicted for simply breaching a term of his or her lease. The Tenant took the position that the lease did not provide any sanctions for breaching the no smoking clause and that he could only be evicted if the smoking interfered with the substantial enjoyment of the Landlord or another Tenant, which he submits does not apply in this case. The Tenant also argued that under the tenancy agreement, the Landlord agreed to maintain the appliances and furnishings at her expense, except maintenance required as a result of wilful damage or negligence on the part of the Tenant.

I agree that it is lawful to include a no smoking clause in a rental agreement. I do not know of any public policy that is against putting no smoking clauses in tenancy agreements. The Act contemplates tenancy agreements and provides for their enforcement. Sections 14 and 15 of the Act specifically prohibit no pet clauses and acceleration clauses but, for most part, the contents of tenancy agreements are left to the parties. No smoking clauses are neither expressly prohibited by the Act nor contrary to the Act. Indeed, Tenants have been evicted under section 64, where

their smoking interfered with the reasonable enjoyment of the Landlord or Tenants (*Feaver v. Davidson*, [2003] O.H.R.T.D No. 103; *Vanderlinden v. McConnell*, TEL-05320). In *Vanderlinden*, the Tenant signed an agreement that contained a no smoking clause and breached the agreement by smoking. While these cases refer to Landlords directly affected by smoking by tenants living in the same complex as the Landlord, they support the position that smoking may substantially interfere with the reasonable enjoyment of the Landlord or other Tenants or with the lawful right privilege or interest of the Landlord. Section 64 is not limited to the enjoyment of the residential complex by the Landlord or other tenants. It also protects other lawful rights, privileges or interest of the landlord or another tenant. A Landlord may, for example, prohibit smoking in a rental unit to protect the Landlord from applications from other Tenants with respect to substantial interference with their enjoyment of the residential complex. In this case, the landlord sought to protect her business of short-term rentals to executives or individuals who need a short-term accommodation, as well as the resale value of the rental unit, by including a no smoking clause in the lease. Such interests are lawful and may be protected by clauses in a lease. Once a lease containing a no smoking clause is signed by the parties, the Landlord gains a lawful right and a breach of the clause may constitute a substantial interference with that right (*Standbar Properties Limited v. Rooke* (November 9, 2005), Hamilton Docket No. 04-212DV (Div Ct.)). In this case, the Tenant signed a lease with a no smoking clause, and the interest of the Landlord in obtaining that clause was substantial. The remaining issue is whether the Tenant breached that clause and, if so, whether the breach substantially interfered with the Landlord's lawful right, privilege or interest.

FINDINGS

It is not disputed that the Tenant signed an agreement to lease the rental unit and that contained a no smoking clause. The term of the lease was one year, subject to renewal, but terminable by the Tenant after 3 months with 30 days notice. An inventory list itemized the furnishings that came with the rental unit. These included a leather sofa, throw pillows, a bergere chair, window blinds, broadloom, dining room chairs, framed pictures, 2 iron bar stools with silk seat cushions, and a wood bench with fabric seating and cushions. The photographs depict the rental unit as a luxury furnished unit and letters from a number of real estate agents and a client of the Landlord confirm that this is the case.

It is undisputed that some smoking did occur in the unit. The dispute centres on how often this occurred and the effect of the smoking on the rental unit. The Landlord alleged that smoking occurred on an ongoing basis from December 2006 and that the Tenant did not heed the Landlord's warning about smoking in the unit. The Landlord testified that the rental unit smelled of smoke and its character as a non-smoking unit has been adversely affected by the failure of the Tenant to ensure that there was no smoking in the unit. In the Landlord's view, the smell of smoke in furnishings constitute damage. The Tenant for his part testified that on three occasions, his guests smoked in the unit in his absence and when he returned he told them to stop. The Tenant suggested the rental unit was not well ventilated, which would compound the effect of smoking, but he insisted the rental unit was not damaged or adversely affected by the smoking that occurred.

I find that, contrary to the Tenant's testimony, from December 2006 onwards the Tenant permitted smoking in the rental unit on a regular basis. Counsel for the Tenant urged me not to find the Landlord credible because her testimony shifted on issues such as how often she painted

the rental unit in the past and because she did not produce all the notes she had made with respect to her dealings with the Tenant. The Landlord testified that she had used the notes to refresh her memory with respect to dates of events, as opposed to the substance of her recollection. Counsel for the Landlord rightly pointed out the Landlord did not have an objective basis for claiming that carcinogens may linger on glasses that have been exposed to smoke, but have been washed in a dishwasher. I found the Landlord's testimony to be generally credible. She was argumentative during cross-examination which made her take a few extreme positions when prodded by Counsel for the Tenant. Nonetheless, the testimony of the Landlord on the central issues is backed by evidence from other sources, such as e-mails, photographs, letters from other observers, as well the testimony of the owner of the cleaning company used by the Landlord. The totality of the evidence establishes that there was ongoing smoking in the rental unit in contravention of the tenancy agreement.

The owner of the cleaning service employed by the Landlord, Eva Lidzbarska, testified that her cleaning service cleaned the rental unit without incident from July 2006 until December 2006. The cleaning staff found no evidence of smoking in the rental unit before December 2006. Ms. Lidzbarska testified that on or about December 4, 2006 she attended the unit with her employee to clean the unit and observed a number of changes. There was evidence of smoking in the unit: cigarette ashes, cigarette butts in the dishwasher, and sheets and bedding in the unit that smelled strongly of cigarette smoke. There was lots of women's clothing in different parts of the unit and the cleaning staff believed that a woman was residing with the Tenant. Ms Lidzbarska informed the Landlord of these developments. Ms. Lidzbarska attended the unit on or about December 18, 2006 and made observations that were similar to those she made on her previous visit and once again she informed the Landlord of her observations. The Landlord confronted the Tenant about smoking in the unit. He blamed it on a guest and indicated that he would ensure it did not happen again. In January 2007, the Tenant objected to the cleaning staff cleaning the apartment without a fixed schedule and on January 30, 2007 he found one of the cleaning staff in the unit and was upset. He threatened to call the police. This ended cleaning visits by Ms. Lidzbarska's company. On January 30, Ms Lidzbarska's employee informed her that there was a strong smell of cigarette smoke throughout the apartment.

Having encountered problems with the Tenant, the Landlord put up the rental unit for sale. This meant showings to real estate agents and prospective buyers. A number of these individuals also observed evidence of smoking in the unit. A broker, Gene Beatty, reported being assaulted by an enveloping wall of smoke on February 3, 2007, when he entered the unit (Tab I of Exhibit L1). Another broker, Connie Brienza-Vincent, noticed the smell of smoking in the unit on February 18, 2007. Finally, On March 15, 2007, Edward Grindstaff, a client of the Landlord attended the unit with the Landlord and also notice a strong smell of smoking in the unit (see affidavit Tab R of Exhibit L1). The letters and affidavit were solicited by the Landlord, but there is no reason to doubt the observations made in them. While the authors and affiant did not testify at the hearing, it was open to the Tenant to summons them for the purpose of cross-examination.

With respect to the impact of smoking on the unit, Mr. Grindstaff, an executive, states in his affidavit that a client like himself would not be interested in renting the unit without extensive renovations and that the furnishings in the unit may not be salvageable. Furthermore, he was of the opinion that the Landlord would have to reduce the price of the rental unit in order to find a buyer. Ms. Brienza-Vincent also expressed the view that the smell of smoke is difficult eradicate, therefore, most non-smokers would not be interested in using furnishings exposed to cigarette

smoke. Mr. Gene Beatty suggested that it would be costly to scrub all surfaces with a chemical and repaint the wall in order to get rid of the smell of smoke. These observations by real estate brokers and an executive real estate client are not far fetched. Rather, they are in "harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and those conditions" (*Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.)).

In light of the findings above, the Landlord has established the Tenant caused damage to the furnishings in the rental unit by permitting smoking in the unit. Such damage is not normal wear and tear and is due to the negligence of the Tenant. By permitting smoking in the unit, the Tenant also substantially interfered with the right of the Landlord to engage in and protect her business of renting furnished luxury accommodation to a wider clientele of non-smokers.

The Landlord further alleged the Tenant obstructed her right to sell the rental unit by refusing entry to prospective buyers and in one instance sticking notices on pictures in the unit stating ("No Show"). By the time the Landlord put the unit up for sale their relationship had deteriorated. The Tenant objected to the showings because he believed they were frequent and intrusive. The appointment summary (Tab F of Exhibit L1) from Sutton Group, the real estate firm, shows 16 appointments in February 2008. The Tenant refused entry 7 times, allowed entry 6 times, and 3 appointments were cancelled. Given the number of refusals, the Tenant's claim that he refused entry because of lack of notice or improper notice is not credible. By refusing entry to prospective buyers, and sticking notices stating "No Show" after proper notice was given, the Tenant substantially interfered with the Landlord's right to sell the rental unit.

Compensation

The Landlord acknowledged that, without possession of the unit, it is difficult to assess the full extent of the cost of restoring the unit to an acceptable condition. She submitted some invoices from professionals with respect to painting the apartment, reupholstering the chairs and steam cleaning the broadloom. For cleaning the furniture, fixtures and blinds, replacing lamp shades, and replacing the box spring and mattress, the Landlord gave her own estimates. The Landlord also claimed loss of rental income during the period of restoration.

The Tenant took issue with the Landlord's claim for compensation. He argued the person who provided the estimates for the painting did not view the unit and that the Landlord's estimates are based on guess work. I agree that assessing compensation under these circumstances is not straightforward. However, the Act does not require perfection in the assessment of compensation. Under section 89 of the Act the Board may require a tenant to pay "reasonable costs" that the Landlord has incurred or will incur for the repair of damaged property or the "reasonable cost" of replacing damaged property where repairing is not reasonable. Furthermore, the Tenant did not offer competing estimates to show that the Landlord's estimates are not reasonable.

At a bare minimum, in order to restore the rental unit to its former state, furnishings that involve fabric would have to be replaced and the walls of the unit must be washed and painted. With

respect to the painting, the Landlord provided an invoice from LM Construction which puts the cost applying stain killer primer to the unit and painting it at \$4,452.00. The company previously painted the unit and their estimate is based on their knowledge of the unit. I find that the estimate, which includes labour, is reasonable and I will allow the claim.

Given lingering smells in fabrics, reupholstering chairs is also reasonable. The Landlord provided an estimate from Art More Sofa amounting \$800.00 plus tax and the cost of fabric. I will allow the Landlord's claim for \$1249.85 as the reasonable cost of reupholstering the chairs and bench.

The broadloom in the unit may very well need replacement, but a professional carpet cleaner believes two steam cleanings would suffice. I would allow the Landlord's claim for \$315.00. I will also allow compensation for 10 hours of cleaning hard surfaces in the unit and fixtures at the cost of \$30 an hour, the rate charged to the Landlord by her cleaning company, for a total of \$300.00.

The Landlord asked for \$1,140.00, representing the cost of replacing the queen size box spring and mattress. I will allow this claim, as I find this estimate to be reasonable. The Landlord further claimed \$2070.24 as the cost of replacing linens and towels 9 sheets, bed skirt, duvet cover, duvet, cushions etc. The Landlord did not submit evidence of prices from a linen store. Given that these items vary in price, I will apply a discount of about 30% to the Landlord's estimates and grant the Landlord \$1450.00 as the reasonable cost of replacing the linens and towels.

Finally, I will award the Landlord \$2,052.00, which represents one month's rent to compensate the Landlord for lost rent during the renovation/restoration of the rent. It should not take more than a month to complete the work required.

The total amount of compensation due is \$10,958.85. This board's monetary jurisdiction is \$10,000.00. Thus, the Landlord can only recover \$10,000.00 from the Tenant as compensation for compensation for wilful or negligent damage to the rental unit or substantial interference with the Landlord's lawful right privilege or interest.

While it was suggested that the apartment has lost value because of the Tenant permitted smoking in it and that the Landlord failed to find a buyer after lowering the price, it is not necessary to determine a loss that has not crystallized. Furthermore, there are many variables in the rental market. By renovating the rental unit, its value would be restored and the Landlord would be made whole.

TENANT'S APPLICATIONS

The Tenant alleged that the Landlord or the Landlord's agent substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of his household by threatening him on a number of occasions with eviction if she did not receive his rent cheque on the due date. One time she called in the morning of the due date to inquire about

the cheque and on another occasion the Tenant had to hire a taxi to deliver a replacement cheque to the Landlord's residence before midnight on the due date because the Landlord threatened to commence eviction proceedings the next day. The Tenant further alleged that the Landlord interfered with his reasonable enjoyment of the rental unit by scheduling many viewing appointments on behalf of prospective buyers. Some viewings did not occur because no one showed up.

The Tenant has not established that the Landlord substantially interfered with his reasonable enjoyment of the rental unit. A landlord is not required to acquiesce in a tenant's late payment of rent. While the Landlord was inflexible in response to what appeared to be short delays, she is entitled to commence eviction proceedings on the day after the rent is due if the rent is not paid by midnight on the due date.

The Act also entitles the Landlord to entry on written notice to show the unit to prospective buyers. While this is inconvenient, I am not satisfied that the Landlord abused this right. The appointment log shows that there were three cancellations in February 2007 and the Tenant saved himself some inconvenience by refusing 7 entries. It is also relevant that the unit did not sell quickly or sell because the Tenant had permitted smoking in the rental unit. The unit required more showings to find a buyer.

The Tenant for applied for a reduction of the rent charged for the rental unit due to a reduction or discontinuance in services or facilities provided in respect of the rental unit or the residential complex. This centres on the discontinuance of cleaning services the Landlord promised to provide as part of the tenancy agreement. The Landlord agreed to provide two cleanings a month. The Tenant submitted that from February 2007, the Landlord did not provide the cleanings and that he hired someone else to clean the rental unit at the cost of \$50.00 per cleaning.

Under the tenancy agreement, the Landlord promised to provide two cleanings a month. As stated above, the Landlord provided cleaning without dispute until January 2007. In January 2007, the Tenant demanded notice before cleanings and a fixed schedule for cleaning. The Tenant believed his privacy was being invaded. His concern was understandable because the cleaning staff had turned themselves into secret agents of the Landlord, reporting the evidence of smoking in the unit and other details of the Tenant's personal life that could be inferred from the state of the rental unit. The Landlord initially tried to accommodate the Tenant but, given her interest in policing smoking in the unit and gathering information about conditions in the unit, the Landlord insisted on controlling the cleaning schedule. The Tenant then refused the Landlord's cleaning staff entry for cleaning. He seeks compensation for finding alternative cleaning services.

The Tenant's position is understandable, but the law is not on his side. Subsection 26(2) of the Act provides that:

A landlord may enter a rental unit without written notice to clean it if the tenancy agreement requires the landlord to clean the rental unit at regular intervals and,

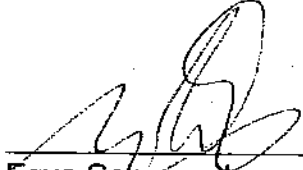
(a) the landlord enters the unit at the times specified in the tenancy agreement; or

(b) if no times are specified, the landlord enters the unit between the hours of 8 a.m. and 8 p.m.

The Tenancy agreement did not specify times for cleaning, so as long as the cleaning staff entered between 8 a.m. and 8 p.m., the Tenant could not legally object. The Landlord's cleaning company respected the time frame provide by the Act. The Tenant cannot claim compensation for cleaning when his objection to entry by the Landlord's cleaning staff is not supported by law.

February 25, 2008
Date Issued

Toronto South Region
2nd Floor, 79 St. Clair Ave. E
Toronto ON M4T 1M6



Egya Sangmuah
Member, Landlord and Tenant Board