



Order under Section 69
Residential Tenancies Act, 2006

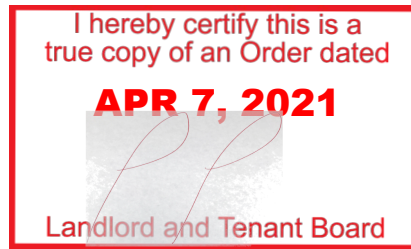
File Number: TEL-10910-20

In the matter of: 99 ELGIN STREET E
OSHAWA ON L1G1T4

Between: Armin Behroozian

and

Kirsten Leigh White
Michelle Deanne Nussler



Landlord

Tenants

Armin Behroozian (the 'Landlord') applied for an order to terminate the tenancy and evict Michelle Deanne Nussler and Kirsten Leigh White (the 'Tenants') because they, another occupant of the rental unit or someone they permitted in the residential complex have willfully caused undue damaged the rental unit; and because they have been persistently late in paying their rent. The Landlord has also applied for an order requiring the Tenants to compensate the Landlord for the damage.

This application was heard by way of video conference on March 16, 2021. The Landlord attended the hearing. As of 1:45 pm, the Tenants were not present or represented at the hearing although properly served notice of this hearing by the Board.

Determinations:

Preliminary Issues

1. In his L2 application, the Landlord listed 4 children as Tenants. At the hearing, the application was amended to remove the named children as Tenants.
2. The Landlord's N7 Notice of Termination (N7) alleges willful undue damage caused to the rental unit by the Tenants, an occupant or someone else permitted in the rental unit by the Tenants.
3. In review of the details listed by the Landlord in the N7, I find the Landlord failed to provide sufficient details of the damages relating to the upstairs broken doors, kitchen drawers and the main floor intake grill. In the N7, the Landlord does not give specific details as to which upstairs doors where broken or the nature of the damage to them. He also did not provide details as to which kitchen drawers were broken or the nature of the

damage to them. The Landlord also did not give details as to which main floor intake grill was damaged.

4. This portion of the N7 does not satisfy s. 43(2) of the *Residential Tenancies Act, 2006* (the 'Act') or the Divisional Court's decision in *Ball v. Metro Capital Property*, [2002] O.J. No. 5931. In that case, the Divisional Court stated that in determining the sufficiency of a notice of termination, it is necessary to consider the context of the notice. The Court held that the tenant needs to know the specific allegations against him/her for three purposes:
 - a. to know the case that must be met;
 - b. to decide whether to dispute the allegations; or
 - c. to consider whether to void the notice.
5. Accordingly, I dismiss the portion of the Landlord's application relating to the damaged upstairs doors, kitchen drawers and intake grill.
6. I found that the Notice did contain sufficient details with respect to the damage to the main entrance door, the basement door frame, the wall behind the toilet paper dispenser and the dispenser itself. As such, the hearing proceeded on these portions of the L2 application.
7. When asked about the lack of detail regarding these issues, the Landlord was not able to provide a satisfactory explanation or a compelling argument as to how the notice was sufficient.

L2-N7 Notice of Termination

8. For the reasons that follow, I find on a balance of probabilities that the Tenants or an occupant, or a person they permitted in the rental unit, willfully caused damage to the rental unit.
9. The Tenants moved into the rental unit on September 17, 2019. On December 30, 2019, the Landlord attended the rental unit to complete an inspection and repair the furnace. The Landlord testified that it was during the inspection that he observed damages to the main entrance door, the basement door frame and the toilet paper dispenser and the wall behind the toilet dispenser.
10. The rental unit is a single-family detached home.

Main Entrance Door

11. The Landlord testified that the hinges for the main entrance door are coming off the door frame. The door frame is cracked around all three hinges. A picture of the damage is on file with the Board and supports the Landlord's oral evidence.

12. The Landlord testified that the damage to the door hinge/frame was as a result of the Tenants having lost their temper and slammed the door to let him in the rental unit on the day of the inspection.
13. The Landlord did not provide an estimate for the cost to repair the damage to the main entrance door. He also testified he was not sure what the cost would be to complete the repairs.

Basement Door Frame

14. The Landlord testified that during the inspection, he observed the inner frame of the basement door was broken and missing. This caused the basement door to swing through, rather than stopping when being closed. The Landlord testified that the Tenants told him they broke the frame when trying to open the door as it was “sticking”. A picture of the damage is on file with the Board and supports the Landlord’s oral evidence.
15. The Landlord testified that he was not sure how much it would cost to repair the damage to the basement door frame.

Wall Behind Toilet Paper Dispense and Toilet Paper Dispenser

16. The Landlord testified that the left bracket for the toilet dispenser was missing and that there were holes in the drywall where the bracket used to be. The Landlord also testified that there was a square piece of drywall missing from the wall behind the toilet paper dispenser. The Landlord testified that he brought the issue to the Tenant’s attention and they told him they would repair it before the rental lease terminates. A picture of the damage is on file with the Board and supports the Landlord’s oral evidence.
17. The Landlord did not know how much it would cost to repair the damage to the wall and the toilet paper dispenser.

Findings

18. I find the Tenants willfully caused undue damage to the rental unit as described above. In making this finding, I considered the uncontested evidence of the Landlord that he observed the main entrance door being damaged by the Tenants as a result of them slamming it open to let him into the rental unit. I also considered the uncontested evidence of the Landlord that the Tenants told them they had to damage the basement door frame as it was sticking and that they would repair the wall and toilet paper dispenser prior to the termination of the rental lease. The Landlord’s uncontested evidence supports a finding that the damage caused was willful on the part of the Tenants. I also find that the damage is undue – it goes well beyond what would be considered “normal wear and tear”.

Compensation to Repair Damages

19. While the Landlord did establish that the Tenants caused willful undue damage to the rental unit, he did not establish the cost to repair the damage. In his application, the

Landlord had given an estimate of \$1,140.00 to repair all the damages listed in the N7 notice. As I have previously found that some of the damages claimed by the Landlord in the N7 notice are not valid and cannot form part of this hearing, I cannot award the Landlord the full cost he estimated in the L2 application. In review of the Landlord's evidence, I find it is reasonable to order the Tenants to pay compensation to the Landlord for the damages list above in the amount of \$300.00.

L2-N8 Notice of Termination ('N8')

20. The Tenants have persistently failed to pay the rent on the date it was due, being the 17th day of each month. The Landlord testified that the only month the rent was paid on time was September 2019. Since that time, the Tenants have persistently paid the rent late. Further, since March 2020, the Tenants have not paid any rent owed.
21. The Tenants are in possession of the rental unit.
22. The monthly rent is \$2,150.00.

Relief from Eviction

23. Section 84 requires the Board to, subject to s. 83(1)(b), expedite an eviction order where it has found the tenant or tenants wilfully committed undue damage within the meaning of s. 63 of the Act.
24. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. In making this finding, I considered the uncontested evidence of the Landlord that the Tenants wilfully caused damage to the rental unit and that the Tenants have persistently paid the rent late since October 2019, and in fact, since March 2020, the Tenants have not paid any rent owed to the Landlord. I also considered the Landlord's uncontested evidence that the Tenant's persistently paying the rent late has caused him significant financial hardships. He has had to borrow money from friends and family to pay the mortgage on the rental unit and he has defaulted on his property taxes.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated, as of April 12, 2021. The Tenants must move out of the rental unit on or before April 12, 2021.
2. The Tenants shall pay the Landlord \$300.00 for compensation for the willful undue damage caused to the rental unit.
3. The Tenants shall also pay to the Landlord \$175.00 for the cost of filing the application.
4. If the Tenants do not pay the Landlord the full amount owing on or before April 12, 2021, they will start to owe interest. This will be simple interest calculated from April 13, 2021 at 2.00% annually on the balance outstanding.

5. If the unit is not vacated on or before April 12, 2021, then starting April 13, 2021, the Landlord 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 Landlord on or after April 13, 2021. The Sheriff is requested to expedite the enforcement of this order.



Dawn Wickett
Member, Landlord and Tenant Board

April 7, 2021
Date Issued

Toronto East-RO
2275 Midland Avenue, Unit 2
Toronto ON M1P3E7

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 October 13, 2021 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.