

## Hostein v Goforth, 2021 CanLII 117229 (ON LTB)

Date: 2021-08-23  
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**Tribunals Ontario**  
Landlord and Tenant Board

Order under Section 69

### **Residential Tenancies Act, 2006**

**File Number:** SOL-14571-20  
SOL-14570-20

**In the matter of:** 4 DUFFERIN STREET GUELPH ON N1H4A1

<b>Between:</b>	Neil Hostein	Landlord
	<b>and</b>	
	Kelli Lynn Goforth	Tenant

Neil Hostein (the 'Landlord') applied for an order to terminate the tenancy and evict Kelli Lynn Goforth (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (the 'L1 application').

The Landlord also 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 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 (the 'L2 application').

The combined L1/L2 application was heard by way of a video conference on June 16, 2021. The Landlord attended the hearing, along with the Landlord's Legal Representative, A. Kent. D. Kruse ('DK'), a witness for the Landlord, also attended a portion of the hearing. As of 10:00 a.m., the Tenant was not present or represented at the hearing, although properly served with notice of this hearing by the Board.

### **Preliminary Issues:**

1. First, the Landlord requested that the Landlord's L1 and L2 applications with respect to this tenancy be heard together. On September 8, 2020, the Board granted the Landlord's request and endorsed that the applications were to be heard together. As such, I proceeded to hear the applications together.
2. Second, the total amount claimed by the Landlord in the combined L1/L2 application exceeds the Board's monetary jurisdiction. Subsection 207(1) of the *Residential Tenancies Act, 2006* (the 'Act') limits the monetary jurisdiction of the Board to that of the Small Claims Court; that amount is \$35,000.00.
3. At the outset of the hearing, the Landlord agreed to waive any amount that exceeds the Board's monetary jurisdiction and agreed that the amount being claimed is limited to \$35,000.00, which is the monetary jurisdiction of the Board.

### **Determinations and Reasons:**

#### L1 application

1. The Tenant has not paid the total rent the Tenant was required to pay for the period from March 1, 2020 to November 12, 2020. Because of the arrears, the Landlord served a Notice of Termination effective April 18, 2020.
2. The Tenant was in possession of the rental unit when the application was filed.
3. The Landlord collected a rent deposit of \$1,750.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit is owing to the Tenant for the period from June 1, 2017 to April 18, 2020.
4. The Tenant did not make any payments to the Landlord after the application was filed.
5. The Tenant gave vacant possession of the rental unit to the Landlord on November 12, 2020.

#### L2 application

6. The Landlord's initial L2 application was filed with the Board on April 20, 2020. This L2 application claimed a total of \$4,600.00 in this application.
7. The Landlord then filed an amended L2 application with the Board on April 8, 2021, requesting \$26,161.51 as the reasonable costs of repairing the damage to the rental unit. The Landlord submitted that the Landlord had not been aware of the extent of the overall damages to the property as the Tenant had repeatedly refused the Landlord entry into the rental unit. It was only after the Tenant had vacated the rental unit that the Landlord was able to gain entry into the rental unit. The Landlord had also been unable to attend at the rental unit due to restrictions related to the COVID-19 pandemic.

8. The Landlord testified that he had sent several letters to the rental unit while the Tenant was still in possession of the rental unit about repairs and that he was actually informed by police that the Tenant had vacated the rental unit. Upon receiving vacant possession of the rental unit, the Landlord testified that he had discovered extensive damage to the rental unit as well as bags of garbage that had been left behind by the Tenant. The Landlord testified that the Tenant had also left behind a python at the rental unit and had later broken into the rental unit to retrieve this python.

9. Rule 15.1 of the Board's Rules of Procedure sets out the process for requesting to amend an application. It states the following:

15.1 A request to amend an application before the hearing must be:

- a. in writing;
- b. served with the amended application to all other parties; and,
- c. filed with LTB with the amended application and a completed Certificate of Service.

10. The Landlord gave oral testimony and filed photographs in support of his claim for compensation for the damage to the rental unit. The photographs were admitted into evidence as Exhibit 'C'. These photographs show extensive damage to the floors, carpet, baseboards, and walls of the rental unit. The photographs also show that a considerable amount of garbage had been left behind by the Tenant at the rental unit. The Landlord testified that a significant amount of the damage appeared to have been caused by the Tenant's pets, and that the smell at the rental unit was 'unbearable'. According to the Landlord, he had incurred overall costs of approximately \$48,000.00 to repair the extensive damage to the rental unit.


11. DK is the owner of Defined Property Investments Inc., the company that was employed by the Landlord to repair the rental unit after the Tenant vacated the rental unit. DK testified that he had prepared the original estimate of \$13,075.23 in March 2020, when he had first attended at the rental unit. A copy of this invoice was filed with the Board as Exhibit 'A'. Subsequently, his company conducted extensive repair work at the rental unit, which included removing and replacing the carpets, the flooring, and the baseboards throughout the home. DK charged the Landlord \$30,410.31 for the extensive repairs to the rental unit. A copy of this invoice was filed with the Board as Exhibit 'B'. DK testified that the difference between the two sets of figures largely arose from the greater nature of damage to the rental unit than originally anticipated and the presence of large amounts of garbage which had to be disposed of.

12. Based on the uncontested evidence before the Board, I am satisfied, on a balance of probabilities, that the Tenant caused wilful undue damage to the rental unit during the tenancy.

13. While I am satisfied that the Landlord's actual cost to repair and replace the damage to the rental unit exceed even the amount that is claimed in the Landlord's amended application, pursuant to the Divisional Court's decision in *Beauge v. Metcap Living Management Inc.*, [2012 ONSC 1160](#), it is not open to the Board to award an amount that is not claimed in an application unless that application is amended and the requirements of procedural fairness met. A basic requirement of procedural fairness is that a party must have notice of the claim against them. In this instance, there is no evidence that the amended application was served upon the Tenant. I also note that allowing the amendment would be in contravention of Rule 15.1 of the Board's rules. As such, I am not prepared to allow the Landlord to amend its claim in the L2 application.

14. I am satisfied that the Tenant received notice that the Landlord was claiming \$4,600.00 as the cost to repair the damage to the rental unit, as this amount was claimed in the N5Notice and the original L2 application, which were both served upon the Tenant. I find the amount claimed to be reasonable and will order the Tenant to pay this amount.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated as of November 12, 2020, the date the Tenant gave vacant possession of the rental unit to the Landlord.
2. The Tenant shall pay to the Landlord \$13,327.57\*, which represents the amount of rent owing and compensation up to November 12, 2020, less the rent deposit and interest the Landlord owes on the rent deposit.
3. The Tenant shall also pay to the Landlord \$4,600.00, which represents the reasonable costs of repairing the damage and replacing the damaged property, as claimed in the original L2 application.
4. The Tenant shall also pay to the Landlord \$175.00 for the cost of filing the application.
5.  If the Tenant does not pay the Landlord the full amount owing\* on or before September 3, 2021, the Tenant will start to owe interest. This will be simple interest calculated from September 4, 2021 at 2.00% annually on the balance outstanding.

**August 23, 2021**

**Date Issued**

Arnab Quadry

Member, Landlord and Tenant Board

Southern-RO

119 King Street West, 6th Floor Hamilton ON

L8P4Y7

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

\* Refer to section A on the attached Summary of Calculations.

**Schedule 1 SUMMARY OF CALCULATIONS**

**File Number: SOL-14571-20**

**A. Amount the Tenant must pay as the tenancy is terminated:**

<b>Reasons for amount owing</b>	<b>Period</b>	<b>Amount</b>
Arrears: (up to the termination date in the Notice of Termination)	March 1, 2020 to April 18, 2020	\$2,865.21

Plus compensation: (from the day after the termination date in the Notice to the date the rental unit was vacated)	April 19, 2020 to November 12, 2020	\$12,309.44
Less the rent deposit:		-\$1,750.00
Less the interest owing on the rent deposit:	June 1, 2017 to April 18, 2020	-\$97.08
Amount owing to the Landlord on the order date: (capped by the Board's monetary jurisdiction)		<b>\$13,327.57</b>
Additional costs the Tenant must pay to the Landlord:		\$175.00
<b>Total the Tenant must pay the Landlord as the tenancy is terminated:</b>		<b>\$13,502.57</b>