



Order under Section 69  
**Residential Tenancies Act, 2006**

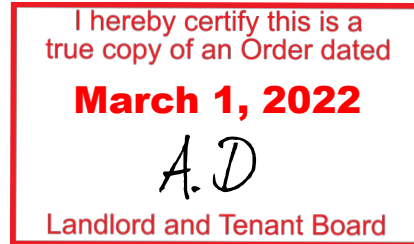
**File Number:** EAL-90128-20

**In the matter of:** E, 55 ONTARIO STREET  
MORRISBURG ON K0C1X0

**Between:** Carol Locke  
Arlie Locke

**and**

Kaitlyn Richardson  
Marcus Richardson



Landlords

Tenants

Carol Locke and Arlie Locke (the 'Landlords') applied for an order to terminate the tenancy and evict Kaitlyn Richardson and Marcus Richardson (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe. (L1 application)

The Landlords also applied for an order to terminate the tenancy and evict the Tenants because they, another occupant of the rental unit or someone they permitted in the residential complex have wilfully or negligently caused undue damage to the premises. The Landlords has also applied for an order requiring the Tenants to compensate the Landlords for the damage; and 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 Landlords or another tenant. (L2 application)

This application was heard by videoconference on January 27, 2022.

The Landlords and the Tenants attended the hearing.

**Determinations:**

Preliminary Issue

1. The Tenant Marcus Richardson (MR) testified that the Tenant Kaitlyn Richardson (KR) is the only one living in the unit. On February 24, 2020 he texted the Landlord that he was moving out March 1, 2020. The Landlords responded asking what was happening with the tenancy and he told them that KR was taking over the lease. He submitted that he should not be included as a party because he is no longer living there, plus the arrears happened after he left and with the exception of the kids colouring on the walls the damages also occurred after.

2. The Landlords testified that MR did not give proper notice of termination, plus MR and KR have always had an on/off again relationship; have received calls from both saying he/she wants the other off of the lease. MR was in the unit when the damages occurred and in regard to the arrears, money was given to him to pay the rent and it was not passed on to the Landlords. For all these reasons MR should remain as a party to the process.
3. KR testified that both she and MR should be responsible as they are both Tenants; he cannot just leave and walk away from his liabilities as a Tenant.
4. For the reasons that follow I find MR is a party to this application. It is a common law principle that one party cannot unilaterally alter a contract. Here, MR advised the Landlord that he was vacating, and that KR was taking over this is a unilateral act. There is no evidence that KR agreed to take on the entire lease, nor is there any evidence that the Landlords agreed to change the lease. For the lease to be changed it takes all parties to be in agreement.
5. Further, section 16 of the *Residential Tenancies Act, 2006* (the 'Act') requires parties to minimize their losses. In the case at hand neither MR or KR have taken any steps to do so. MR left the unit expecting KR to take over the lease, yet KR has insufficient income to do so. KR, despite knowing she had insufficient income to sustain the tenancy took no steps to find roommate to share expenses. Therefore, I find it would also be unfair to distribute liability between the two Tenants. As such, I find MR and KR remain as joint-Tenants.

#### L1 application

6. The Tenants have not paid the total rent the Tenants were required to pay for the period from March 1, 2020 to October 31, 2020. Because of the arrears, the Landlords served a Notice of Termination effective March 17, 2020.
7. The monthly rent effective January 1, 2022 is \$708.68; it was \$700.28.
8. The Landlords collected a rent deposit of \$725.00 from the Tenants and this deposit is still being held by the Landlords.
9. Interest on the rent deposit is owing to the Tenants for the period from February 28, 2018 to March 17, 2020.
10. The Tenants paid \$6,302.52 after the application was filed.
11. At the time of hearing the Tenants owe \$10,002.32 comprised of arrears (\$9812.32) and the application filing fee (\$190.00).
12. The Landlords submitted that they are seeking the standard 11-day voidable order due to the quantum of arrears.

13. The Tenant KM testified that she does not dispute the amount of arrears owing; she paid what she could. She plans on being out by the end of February, she has an appointment on February 7<sup>th</sup> with respect to getting into a treatment plan therefore, she just needs that to happen then she can leave.
14. MR did not offer any testimony with respect to the arrears.

L2 application

15. For the reasons that follow I find the Tenants substantially interfered with the Landlords' reasonable enjoyment and wilfully or negligently caused undie damage.
16. The L2 application is based on a N5 notice of termination served to the Tenants March 2, 2020. The termination date on the notice was March 23, 2020. The notice set out that the Tenants substantially interfered with the Landlord and caused damage to the rental unit.
17. The Landlords testified that he Tenants substantially interfered with their lawful right, interest or privilege and their reasonable enjoyment by having the utility bills put in the Landlords' names. The utilities were in MR's name. The lease requires the Tenants to pay for the utilities. Therefore, in order to avoid the charges being added to their tax bill, the Landlords had to pay out-of-pocket. In January 2021, KR had the utilities put in her mother's name, but that did not address the bills the Landlords had to cover.
18. The Landlords testified that on February 27, 202, after serving a proper notice of entry, they conducted an inspection of the unit and found damage throughout the unit. There was writing and scribbling on walls and doors, holes in the walls, ceilings splattered with food and blots of paint, and door casings were broken as though forced open when locked. The Landlords entered into evidence numerous pictures of the damage, including where the Tenants had attempted some form of repair.
19. The Landlords also testified that he numerous pictures and shelves the Tenants had on the walls will cause damage when they are removed; they suspect the nails used were larger than need be which will leave bigger holes.
20. The Landlords submitted that they are seeking termination of the tenancy in 11 days and \$3000.00 to cover the costs of repairing all the damage. They got their quote from Home Depot. It will be \$1,250.00 to replace the 5 doors that are damaged beyond repair, including locks and casings. The Landlords also submitted that it would be \$1,750.00 to wash, clean and repaint walls in bedrooms, living rooms, dining room and kitchen with "numerous holes and small nail holes and numerous tacks". They also need to replace 4 window screens.
21. KR testified that the damage to the doors was when they were broken into. There s some scribbling on the walls, but the damage is not as bad as it seems; some of the damage has been fixed. As for the bathroom door, it was kicked in by a neighbour who was visiting. In regard the nail holes, tenants are allowed to hang pictures and shelves, this is

not damage, it is wear and tear. She should not be responsible for the damage done by people who just let themselves in, such as her son and his friends and the neighbour.

22. MR did not offer any testimony with respect to the damages.

Analysis

23. Section 64 of the *Residential Tenancies Act, 2006* (the 'Act') states:

(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.

(3) The notice of termination under subsection (1) is void if the tenant, within seven days after receiving the notice, stops the conduct or activity or corrects the omission.

24. Section 62 of the Act states:

(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.

(2) A notice of termination under this section shall,

(a) provide a termination date not earlier than the 20th day after the notice is given;

(b) set out the grounds for termination; and

(c) require the tenant, within seven days,

(i) to repair the damaged property or pay to the landlord the reasonable costs of repairing the damaged property, or

(ii) to replace the damaged property or pay to the landlord the reasonable costs of replacing the damaged property, if it is not reasonable to repair the damaged property.

(3) The notice of termination under this section is void if the tenant, within seven days after receiving the notice, complies with the requirement referred to in clause (2) (c) or makes arrangements satisfactory to the landlord to comply with that requirement.


25. Here, the conduct complained of under section 64 of the Act is that the utility bills were, without the consent of the Landlords, put in their names this making them liable for the payment. I find on the evidence and testimony before me that the utility bills unilaterally being transferred into the Landlords names is substantial interference of their reasonable enjoyment and their lawful rights; the Tenants were to pay the utilities not the Landlords.
26. With respect to section 62 of the Act, I find based on the pictorial evidence before me that the scribbling and writing on walls, holes in walls and doors, and broken doors including casings and locks constitute either willful or negligent damage. I find the Tenants are responsible for this damage as there is insufficient evidence before me to find that the damage was done by others who were not supposed to be in the unit.
27. However, I do not consider nail to tack holes left by pictures to be willful or negligent damage; this is regular wear and tear a cost of doing business. As such the Tenants are not responsible for any costs related to this.
28. As for the amount of \$3,000.00 claimed by the Landlords to do the repairs, the only specific testimony was in regard to 5 doors including locks and cases costing \$250.00 each from Home Depot, totalling \$1,250.00. The balance of \$1,750.00 is not broken down and includes repair of nail holes and screens; nail holes are not damage, and the screens were not part of the application. Therefore, I find a reasonable amount to award for repair of the damages is \$1,500.00; this encompasses the larger expense of the doors and some money towards other damages. An order will issue for same.
29. 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. The Tenant KR indicated that she would be able to vacate the rental unit by the end of February, therefore extra time should not be necessary.
30. This order contains all the reasons for the decision within it. No further reasons shall be issued.

**It is ordered that:**

1. The tenancy between the Landlords and Tenants is terminated. The Tenants must move out of the rental unit on or before March 12, 2022.
2. The Tenants shall pay to the Landlords \$9,770.30\*, which represents the amount of rent owing and compensation up to March 1, 2022, less the rent deposit and interest the Landlords owe on the rent deposit.
3. The Tenants shall also pay to the Landlords \$23.02 per day for compensation for the use of the unit starting March 2, 2022 to the date the Tenants move out of the unit.

4. The Tenants shall also pay to the Landlords \$190.00 for the cost of filing the L1 application.
5. The Tenants shall pay to the Landlords \$1,500.00, which represents the reasonable costs of repairing the damage and/or replacing the damaged property.
6. If the Tenants do not pay the Landlords the full amount owing\* on or before March 12, 2022, the Tenants will start to owe interest. This will be simple interest calculated from March 13, 2022 at 2.00% annually on the balance outstanding.
7. If the unit is not vacated on or before March 12, 2022, then starting March 13, 2022, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
8. 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 March 13, 2022.

**March 1, 2022**  
**Date Issued**

  
\_\_\_\_\_  
Diane Wade  
Member, Landlord and Tenant Board

Eastern-RO  
255 Albert Street, 4th Floor  
Ottawa ON K1P6A9

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 September 13, 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.

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

**Schedule 1  
SUMMARY OF CALCULATIONS**

**File Number: EAL-90128-20**

**A. Amount the Tenants must pay if 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 March 17, 2020	\$391.39
Less the amount the Tenants paid to the Landlords		-\$6,302.52
Plus compensation: (from the day after the termination date in the Notice to the date of the order)	March 18, 2020 to March 1, 2022	\$16,436.28
Less the rent deposit:		-\$725.00
Less the interest owing on the rent deposit:	February 28, 2018 to March 17, 2020	-\$29.85
Amount owing to the Landlords on the order date: (total of previous boxes)		<b>\$9,770.30</b>
Additional costs the Tenants must pay to the Landlords:		\$190.00
Plus daily compensation owing for each day of occupation starting March 2, 2022:		\$23.02 (per day)
<b>Total the Tenants must pay the Landlords if the tenancy is terminated:</b>		<b>\$9,960.30, + \$23.02 per day starting March 2, 2022</b>