



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

Citation: mojjs v Miller, 2023 ONLTB 60140

Date: 2023-09-20

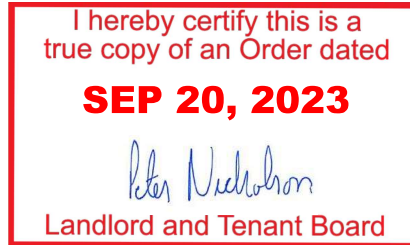
File Number: LTB-L-029586-23

In the matter of: 1788 BARTON ST E
HAMILTON ON L8H2Y5

Between: mojjs
Mafu Ojisua

And

Zina Miller



Landlord

Tenant

mojjs and Mafu Ojisua (the 'Landlord') applied for an order to terminate the tenancy and evict Zina Miller (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 damage to the premises.

This application was heard by videoconference on June 26, 2023.

The Landlord and the Tenant attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the Tenant must move out of the rental unit on or before of November 30, 2023
2. The Landlord brought this application, on the basis the Tenant has wilfully or negligently caused undue damage to the rental unit or residential complex.
3. This is a first N5 and it was served on March 2, 2023. The rental unit is a bungalow, single-family dwelling. The Landlord's Form N5, alleges, among other things, that the tenant has "trashed" the rental unit by damaging the shower, floors and tiles, walls, doors and kitchen.
4. The Landlord inspected the rental unit on March 2, 2023 and indicated he saw "lots of damage" at that time. The Landlord produced pictures taken from March 31, 2023 showing missing and broken kitchen floor tiles in multiple locations within the rental unit, scratch markings on two doors; a missing shower faucet; and, a large rectangular cut hole in the drywall. The Landlord also produced a bedroom picture showing some peeling/raising of the bedroom tiles as evidence of water damage and testified there were several holes in walls in various rooms.

5. The Landlord's Form N5 has not been voided. In this regard, the Landlord produced a quotation for the damage in the amount of \$12,713.00 and it is not disputed that the Tenant has not paid this amount.
6. The Tenant denied the damage was caused wilfully or negligently, stating the broken tiles were the result of uneven tiles and someone falling, and the stove being moved; the door markings were the result of her dogs scratching; the bathtub faucet was removed due to a leak and resulting mould; and, the peeling/raising of the bedroom tiles was the result of mopping. The Tenant also stated the holes in the walls were caused by children throwing baseballs but added the holes are small and/or have been patched up. The Tenant further indicated that the Landlord has failed to repair the rental unit when required.
7. Given the number of floor tiles broken, I do not find it believable this damage was the result of uneven tiles and someone falling or simply the stove being moved, as purported by the Tenant. More likely, it appears the tile breakage was caused by heavy objects being dropped or thrown without regard to the damage caused below. While the Tenant stated the missing shower faucet and drywall panel were the result of a hot water leak, few particulars were provided of this event, or why the faucet and drywall panel were not returned. The interior doors and frames also show damage from scratching/ peeling. In one picture, the door handle is broken, and the frame is cracked, which I find was most likely caused by the application of force by way of punch/kick/blunt object.
8. Based upon the evidence presented, including the totality of the damage throughout the rental unit, I find on a balance of probabilities that the damage has been caused negligently and/or wilfully by the Tenant or someone living/visiting the Tenant.

Section 83

9. Section 83 requires that I consider all the circumstances in the case, including the Tenant's and the Landlord's situations, to determine if it would be appropriate to delay or deny eviction in the form of section 83 relief.
10. The Landlord seeks eviction, noting the Tenant has been physically abusive and confrontational. The Landlord has not been able to perform the repairs as a result. Although not part of this application, the Landlord has indicated that additional damage was noted in the rental unit, including a ceiling hole. The Landlord further indicated he has been ticketed from the city bylaw due to trash left in and around the property.
11. The Tenant has resided at the rental unit since April 2020 and has 3 children. The Tenant seeks to remain in the rental unit. In the event eviction were ordered, the Tenant requests 6-8 months to find alternative accommodations.
12. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006*(the 'Act'), including the Tenant's personal circumstances, and balanced this with any potential prejudice to the Landlord. In the circumstances, I find that it would not be unfair to postpone the eviction until November 30, 2023 pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated, as of November 30, 2023. The Tenant must move out of the rental unit on or before of November 30, 2023.
2. If the unit is not vacated on or before of November 30, 2023, then starting December 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. 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 December 1, 2023.



September 20, 2023
Date Issued

Peter Nicholson
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,
Toronto ON M7A 2G6

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 of the Tenant expires on June 1, 2024 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.