

Order under Section 16.1 of the  
**Statutory Powers Procedure Act**  
and the **Residential Tenancies Act, 2006**

**File Number:** TNL-91827-17-IN

**In the matter of:** 1103, 370 DIXON RD W  
TORONTO ON M9R1T2

**Between:** Maja Petrovic

I hereby certify this is a true copy of the Order  
(Name of Document)  
BT  
(Signature of Staff Member)

Landlord

and

Bryann Muirhead

APR 11 2017

Landlord and Tenant Board

Tenant

**INTERIM ORDER**

Maja Petrovic (the 'Landlord') applied for an order to terminate the tenancy and evict Bryann Muirhead (the 'Tenant') because the Tenant wilfully or negligently caused undue damage to the premises, because the Tenant substantially interfered with her reasonable enjoyment, and because a purchaser of the property requires possession of the unit for their own use.

This application was heard in Toronto on April 7, 2017.

The Landlord and the Tenant's representative Maggie Scruton attended the hearing.

This interim order is issued to determine some of the issues in the application, to clarify for the parties the issues that will be heard at a later date, and to provide for disclosure of evidence.

**Reasons:**

1. At the hearing, the Tenant's representative asked that the matter be adjourned because the Tenant was not available.
2. Before considering the adjournment request, I dealt with preliminary issues regarding the sufficiency of the Landlord's notices and applications. After hearing the Landlord's submissions, I determined that some of the issues in the applications could be decided immediately, for the reasons set out below.
3. I then adjourned the hearing so that the remaining issues can be heard when the Tenant is available. This interim order will serve to explain to the parties which issues have been determined, and which issues will be heard at the next hearing of the matter.

N12 - Purchaser's own use

4. The rental unit is a condo unit. The Landlord served an N12 notice of termination because she has signed an agreement of purchase and sale regarding the unit, and the purchaser intends to move into the unit.
5. Subsection 72(1) of the *Residential Tenancies Act, 2006* (the 'RTA') provides that the Board shall not make an order terminating a tenancy for own use unless the person who personally requires the unit swears an affidavit certifying their good faith.
6. At the hearing, the Landlord stated that the purchaser of the unit has refused to provide the required affidavit. This means that, pursuant to subsection 72(1), I cannot order the tenancy terminated for the purchaser's own use. This portion of the Landlord's application will be dismissed.

N5 - Damage

Issues

7. The Landlord served an N5 notice to terminate the tenancy because the Tenant substantially interfered with the Landlord's reasonable enjoyment, and because the Tenant wilfully or negligently damaged the rental unit.
8. The N5 alleged the following damage to the unit:
  - a. the Tenant removed and disassembled a wall lamp (replacement cost \$79.00);
  - b. the Tenant overloaded and burned out electrical outlets (repair cost \$549.18); and
  - c. the Tenant broke the balcony door (repair cost \$100.00).
9. Those allegations will be heard at the next hearing of this matter.
10. The N5 also alleged that the Tenant removed the Landlord's mirror that was hanging on the wall. Removing a wall hanging is not damage to the rental unit, so the Landlord cannot recover the cost of the mirror through this proceeding. The allegation will be dealt with as an interference with the Landlord's reasonable enjoyment.
11. Similarly, in her application, the Landlord alleged that the Tenant mistakenly told her that the stove was broken, causing her to buy a new stove. That is not an allegation of damage, so I have no authority to order the Tenant to reimburse the Landlord for the new stove.

Available remedies

12. The portion of the N5 that relates to damage stated that the Tenant could void it by paying the Landlord \$868.18.

13. If the Landlord is successful in establishing her claims regarding the lamp, outlets, and balcony door, the most she could be awarded for repair and replacement costs is \$728.18.
14. A notice of termination for damage must give the Tenant opportunity to void the notice by paying the reasonable cost to repair or replace the damaged property. Since the N5 did not set out the correct amount that the Tenant would have to pay, it was invalid as regards damage. The tenancy therefore cannot be terminated for damage.
15. The Landlord's claim for compensation for the alleged damage will be heard at the next hearing of this matter. If the Tenant is found liable for damage, she will be ordered to reimburse the Landlord, but the tenancy will not be terminated on that basis.

N5 – Substantial interference

16. The N5 also alleged that the Tenant substantially interfered with the Landlord's reasonable enjoyment of the property. The particulars in the N5 consisted of five pages of excessively detailed narrative and exposition.
17. For the reasons set out below, I find that many of the facts alleged in the N5 would not constitute substantial interference with the Landlord's reasonable enjoyment.

*Allegations that are not substantial interference*

18. Firstly, the Tenant has complained that there are cockroaches in the unit. The Landlord asked the Tenant to contact the condo building management to arrange for a free cockroach treatment. The Landlord alleges that the Tenant substantially interfered with her reasonable enjoyment by failing to arrange the treatment as requested.
19. Pursuant to section 20 of the RTA, maintenance is the Landlord's responsibility, not the Tenant's. If cockroach treatment is needed, the Landlord must arrange it. The Tenant is not required to arrange the treatment on the Landlord's behalf.
20. Second, the Landlord alleges that the Tenant left the oven on without any food in it, and that this wasted hydro. However, the Landlord does not pay for hydro in the unit. Hydro is paid for by the condo building management. If the Tenant wasted hydro, doing so did not substantially interfere with the Landlord's reasonable enjoyment.
21. Third, the Landlord alleges that the Tenant mistakenly told her that the stove was not working, which induced her to buy a new stove. The Tenant reported what she believed to be disrepair. It was the Landlord's responsibility to investigate the Tenant's complaints and determine what repair or replacement was needed. She cannot blame the Tenant because she chose to replace the stove.
22. Fourth, the Landlord alleges that the Tenant did not let her into the unit to take measurements for a replacement stove. However, she acknowledges that she did not serve a written notice of entry as required by section 25 of the RTA. The Tenant was entitled to refuse entry.

23. Fifth, the Landlord alleges that the Tenant did not keep the stove clean. However, the Landlord did not even discover that the stove was dirty until after she had thrown it in the garbage. The Tenant's alleged failure to clean the stove cannot have interfered with the Landlord's reasonable enjoyment.
24. Sixth, the Landlord alleges that the Tenant did not clean the filter in the clothes dryer. At the hearing, the Landlord stated that the dryer could have been damaged. However, that is not an obvious consequence of failing to clean the filter, and was not stated in the N5. The N5 must contain sufficient particulars for the Tenant to know the case against her. The N5 does not allege that the Tenant's failure to clean the filter interfered with the Landlord's reasonable enjoyment in any way.
25. Seventh, the Landlord alleges that the Tenant failed to return a key fob. She gave the Tenant two fobs, but she asserts that the Tenant is only entitled to one of them. She asked for the second one back, but the Tenant refused.
26. It is normal for tenants to have multiple key copies. The Tenant has the right to keep the second fob, and did not interfere with the Landlord's reasonable enjoyment by failing to return it.
27. Eighth, the N5 includes a long narrative regarding the Landlord's interactions with the Tenant when she came to the unit at various times. The Landlord seems to be alleging that the Tenant told her not to enter the unit, or yelled at her when she entered the unit. However, the narrative is very confusing, and I do not find that it sets out reasons and details sufficient to meet the requirements of subsection 43(2) of the RTA.
28. It appears from the narrative that at times the Tenant refused entry because the Landlord had not served proper notice. The Tenant had every right to refuse entry in those circumstances.
29. At other times, the Landlord entered the unit without the Tenant's consent after failing to give proper notice. In those circumstances, it was understandable and appropriate for the Tenant to be angry with the Landlord and demand that she leave.
30. At other times, the Tenant asked the Landlord not to come to the unit even though the Landlord had given valid notices of entry. I do not find that this would substantially interfere with the Landlord's reasonable enjoyment. After giving a valid notice under section 27 of the RTA, the Landlord is entitled to enter the unit whether or not the Tenant consents.
31. I can find no clear allegation anywhere in the N5 that the Tenant, at any point, improperly interfered with the Landlord's right to enter, inspect, or repair the property. The particulars are simply too confusing, and interspersed with allegations that do not constitute substantial interference. They are not sufficient to inform the Tenant of what she is accused of.

Allegations that will be heard

32. For the above reasons, I find that most of the particulars in the N5 do not set out allegations which would constitute substantial interference with reasonable enjoyment. There are, however, three clear allegations of substantial interference:
- a. the Tenant took the Landlord's wall mirror;
  - b. the Tenant stored clutter in a manner that caused a fire or safety hazard; and
  - c. the the tenancy agreement requires the Tenant to provide proof of insurance, and she failed to do so.
33. Those allegations will be heard at the next hearing of this matter.

Summary

34. The applications to terminate the tenancy for purchaser's own use and for wilful or negligent damage will be dismissed.
35. The following issues remain to be determined in the application regarding damage:
- a. Did the Tenant wilfully or negligently damage the wall lamp, and is the reasonable replacement cost \$79.00?
  - b. Did the Tenant wilfully or negligently damage the outlets, and is the reasonable repair cost \$549.18?
  - c. Did the Tenant wilfully or negligently damage the balcony door, and is the reasonable replacement cost \$100.00?
36. Those questions will be decided after hearing the evidence. If the Tenant caused wilful or negligent damage, she will be ordered to pay the Landlord's reasonable repair or replacement costs.
37. The following issues remain to be determined in the application regarding substantial interference:
- a. Did the Tenant take the Landlord's wall mirror?
  - b. Did the Tenant store clutter in a manner that caused a fire or safety hazard?
  - c. Does the tenancy agreement require that the Tenant provide proof of insurance, and did the Tenant breach that term?
  - d. If the answer to (a), (b), or (c) is "yes," then did the Tenant stop the conduct within 7 days of receiving the N5 notice?

- e. If the answer to (d) is "no," then should relief from eviction be granted pursuant to section 83 of the RTA, or should the tenancy be terminated?

38. Those questions will also be decided after hearing the evidence.

**It is ordered that:**

1. The Landlord's applications to terminate the tenancy for purchaser's own use and for wilful or negligent damage are dismissed.
2. The remaining portions of the Landlord's applications for compensation for damage, and to terminate the tenancy for substantial interference, are adjourned to a date to be set by the Board.
3. On or before April 21, 2017, the Landlord shall provide the Tenant with a copy of any documents, photographs, and other evidence that she intends to introduce regarding the remaining issues in the application.
4. On or before April 28, 2017, the Tenant shall provide the Landlord with a copy of any documents, photographs, and other evidence that she intends to introduce regarding the remaining issues in the application.
5. The Board may refuse to admit any evidence that has not been disclosed pursuant to paragraphs 3 and 4, above.

**April 11, 2017**  
**Date Issued**



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Dale Whitmore  
Member, Landlord and Tenant Board

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