



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

**File Number:** SWL-39465-19

**In the matter of:** 109, 535 PROUDFOOT LANE  
LONDON ON N6H5X2

**Between:** Summit Properties

**and**

Abdi Marhal  
Armen Abdulqader

I hereby certify this is a  
true copy of an Order dated

**DEC 09, 2022**

Landlord and Tenant Board

Landlord

Tenants

Summit Properties (the 'Landlord') applied for an order to terminate the tenancy and evict Abdi Marhal and Armen Abdulqader (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 Landlord has also applied for an order requiring the Tenants to compensate the Landlord for the damage. The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was by videoconference on September 07, 2022.

The Landlord and the Tenants attended the hearing. The Landlord was represented at the hearing by Melissa Anjema. Armen Adulqader provided evidence for the Tenants. Alkali Ali assisted Mr. Adulqader with English translation.

**Determinations:**

1. On November 16, 2019, the Landlord served the Tenant with a N5 Notice of Termination ('N5 notice') to end the tenancy. The N5 alleges the Tenant wilfully or negligently caused damage to the rental unit. The N5 sets out a termination date of December 12, 2019.
2. Based the N5 The Landlord's application seeks termination of the tenancy and \$14,473.01 from the Tenants for costs to repair the damage to the rental unit.
3. As explained below, the Landlord's application is granted.

Heather Fernandes

4. Heather Fernandes testified for the Landlord. She is the Landlord's property manager. She testified when the Tenants moved into the unit was in good condition when the Tenant moved into the unit.
5. On August 20, 2019, the Tenants submitted a work order for a broken microwave. According to Ms. Fernandes, maintenance refused to enter the unit to repair the microwave due to the state of disrepair of the unit. This led to Ms. Fernandes conducting a unit inspection.
6. When Ms. Fernandes conducted a unit inspection, she noticed there was crayon on the wall from floor to ceiling, cupboards were missing, damage to appliances and vanities and radiator cover had been removed. Ms. Fernandes took photographs of the unit when the unit was inspected. Ms. Fernandes entered the unit three times since the initial inspection and notes that the damage to the unit has been progressively getting worse.

Nikki Simms

7. Nikki Simms testified for the Landlord. She is the building manager who lives onsite. Ms. Simms testified there was a leak in the apartment from the unit above. The leak occurred in June or July of 2020. Water from unit above leaked into the Tenants' unit. Ms. Simms advised that it took a week for the Landlord to repair the leak and clear the water from the Tenants' unit.

Doug Beehoo

8. Doug Beehoo testified for the Landlord. He is employed by the Landlord as the maintenance manager. Mr. Beehoo is familiar with the rental unit. Mr. Beehoo first entered the rental unit in 2020.
9. Mr. Beehoo testified that the damage to the unit is so severe that he can not enter the unit and has to have a contractor enter the unit for repairs. Mr. Beehoo describes the walls in the unit as black with filth. He stated the kitchen cupboards are destroyed as is the living room carpet. Mr. Beehoo said the unit would have to be completely gutted to have the unit ready for the next tenant.

Armen Abdulqader

10. Armen Abdulqader testified for the Tenants. It is the Tenant's position that the Landlord caused the damage. Specifically, the Tenant referred to the leak that occurred in the unit in 2020.
11. Mr. Abdulqader denied destroying the kitchen cabinets. He testified that the cabinets were dirty and filthy before the Tenants moved in. In support of the Tenants position the Tenant provided multiple pictures to the Board.
12. Mr. Abdulqader testified that Children's Aid Society inspected the rental unit and noted several deficiencies with the rental unit.

Analysis

13. Section 62 (1) of the Residential Tenancies Act 2006, (the 'Act') says 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.
14. I have reviewed the evidence and accept the Landlord's version of events. The Landlord's position was supported by three witnesses who observed the damage to the unit. Further, the Landlord provided numerous photographs of the unit. I have reviewed the photographs provided. The photographs are clear that the unit was damaged caused wilfully or negligently.
15. I do not accept the Tenants' position that the damage was caused by the leak in 2020. The N5 was served in 2019 well before the leak took place. Several of the pictures provided to the Board were taken in 2019, again, well before the leak took place.
16. The Landlord acknowledges there was leak in the Tenants' unit. However, there was nothing that was presented to the Board by the Tenants that suggest the leak caused significant damage to the unit beyond the damage caused by the Tenants.
17. Further, I do not accept the Tenants' submission the unit was damaged prior to the Tenants moving in. The Landlord provided a copy of the lease agreement. Section 9 of the lease agreement was initialed by both Tenants indicate the rental unit was in good condition prior to the Tenants moving in.
18. The pictures the Tenants provided the Board are unclear. I can not assess the Tenants' pictures to determine the appropriate weight to give them. Therefore, they are of no assistance to the Tenants' response.
19. Finally, the notes from Children's Aid Society do not assist the Tenants. It appears Children's Aid Society inspected the rental unit in 2021, over a year after the N5 was served.
20. Based on the evidence before me I find the Tenants, or another occupant, negligently caused undue damage to the rental unit.

Voiding the N5

21. Section 62(3) of the Act allows a tenant to void a notice of termination if the tenant arranges to replace or repair the damaged property within seven days of receiving the notice of termination.
22. It has been over two years since the N5 was served on the Tenants. Ms. Fernandes has been in the unit several times since the N5 has been served. She testified the condition of the unit has deteriorated over time. I accept Ms. Fernandes' testimony in this regard as it was unchallenged during cross-examination.

23. Based on the evidence before me, I find the Tenants have not voided the N5 in accordance with s. 62(3) of the Act.
24. Section 34 of the Act says a tenant is responsible for the repair of undue damage to the rental unit or residential complex caused by the wilful or negligent conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant.
25. The Landlord provided an estimate from HCS contracting to repair the damage. With taxes the total cost to repair the damage is \$14,473.01, the amount claimed in the application.
26. As I have found the damage to the unit was caused negligently by the Tenants, they will be ordered to reimburse the Landlord for the cost of the repairs under s.34 of the Act.

Relief from eviction

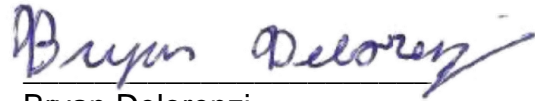
27. Section 83 of the Act requires I consider all the circumstances, to determine if it would be appropriate to grant relief from eviction.
28. I am mindful that eviction is a remedy of last resort. However, the damage to the unit is substantial and the Tenants have made no attempt to work with the Landlord in attempt to repair the damage. As stated above, the damage to the unit has been getting worse over time. I do not see a circumstance where this tenancy may be continued. I have considered all the disclosed circumstances and find it would be unfair to grant relief from eviction under s.83 of the Act.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenants is terminated, as of December 20, 2022. The Tenants must move out of the rental unit on or before December 20, 2022.
2. The Tenants shall pay to the Landlord \$14,473.01, which represents the reasonable costs of repairing the damaged replacing the damaged property.
3. The Tenants shall also pay to the Landlord \$190.00 for the cost of filing the application.
4. The Total amount the Tenants owe to the Landlord is \$14,663.01.
5. The Tenants shall also pay to the Landlord \$39.01 per day for compensation for the use of the unit from December 10, 2022, to the date they move out of the unit.
6. If the Tenants do not pay the Landlord the full amount owing on or before December 20, 2022, they will start to owe interest. This will be simple interest calculated from December 21, 2022, at 4 00% annually on the balance outstanding.

7. If the unit is not vacated on or before December 20, 2022, then starting December 21, 2022, the Landlord 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 Landlord on or after December 21, 2022.

**December 9, 2022**  
**Date Issued**



Bryan Delorenzi  
Member, Landlord and Tenant Board

South West-RO  
150 Dufferin Avenue, Suite 400, 4th Floor  
London ON N6A5N6

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 June 21, 2023 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.