



Order under Section 69
Residential Tenancies Act, 2006

File Number: SWL-54357-21

In the matter of: 20 MCDONALD AVENUE
LONDON ON N6G1B1

Between: Andrew Pritchard Landlord

and

Alexander Brownlee Tenants
Kyle Barker
Philip Gibson

Andrew Pritchard (the 'Landlord') applied for an order to terminate the tenancy and evict Alexander Brownlee, Philip Gibson and Kyle Barker (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe (L1 application). The Landlord also applied for an order terminating the tenancy because the Tenant, another occupant or someone permitted into the residential complex by the Tenant wilfully or negligently damaged the rental unit (L2 application).

This application was heard by way of video conference on December 20, 2021. The Landlord attended the hearing and was represented by Nikisha Evans, Paralegal. As of 11:30am the Tenant was not present, despite being served with notice of hearing by the Board.

Determinations:

L1 application:

1. The Tenants have not paid the total rent the Tenants were required to pay for the period from November 1, 2020 to December 31, 2021. Because of the arrears, the Landlord served a Notice of Termination effective June 24, 2021.
2. The Tenants paid \$3,000.00 after the application was filed.
3. The Landlord has attempted to contact the Tenants by way of letter and email on June 17, 2021 and in September 2021. The Tenants did not respond or propose a repayment plan.

L2 application:

4. The Landlord's application is based on a single N5 notice served to the Tenants on June 29, 2021 with a termination date of July 19, 2021.

5. The property is a single detached dwelling. The Tenants reside in the entire house.
6. On June 4, 2021 the Landlord conducted an inspection of the rental unit. During the inspections the Landlord discovered that the paint on the inside of the front door had been peeled off, the runner on the stairs inside the rental unit had been damaged and torn off, the window screens in the bedroom and sunroom had been damaged and removed, the walls had been repainted and excessive paint splatter was on the baseboards and that there was excessive amounts of garbage being piled up outside the rental unit. The Landlord entered into evidence pictures of the damages and excess garbage (LL exhibit #1).
7. The Landlord's N5 notice required the Tenants to repair and/or replace the damaged property and to remove any excess garbage on or before July 6, 2021. The Landlord testified that the Tenants had not repaired or replaced any of the damaged property or removed the excess garbage.
8. On July 10, 2021 the Landlord attempted to enter the rental unit to get an estimate for the costs of repairs, but the Tenants refused the Landlord access to the rental unit. The Landlord testified that as of this date, the excess garbage and clutter was still present outside the rental unit.
9. Section 62 of the *Residential Tenancies Act, 2006* (the Act) states:

62 (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.

10. Based on the uncontested evidence before the Board, I am satisfied that the Tenants have willfully and/or negligently damaged the rental unit by damaging the screens in the rental unit and by removing the runner on the stairs. I am also satisfied that the Tenants failed to void the N5 notice by not repairing the damaged items.
11. I am not satisfied that the excess garbage or painting the rental unit without the Landlord's consent constitutes willful or negligent damage. Although I appreciate the Landlord's concerns with these allegations, the Landlord's N5 was not served pursuant to section 64(1) of the Act, which speaks to substantial interference with reasonable enjoyment, lawful right and/or privileges.

Relief from eviction:

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 impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenants and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
13. The rent arrears are substantial, and the Tenants were not present at the hearing to propose a repayment plan, discuss any intention to repair the damages or seek any other form of relief. Therefore, even if the Tenant pays the full amount owing as per the L1 application, the tenancy will still terminate on a non-remedial basis pursuant to the L2 application

It is ordered that:

14. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before January 17, 2022.
15. The Tenants shall pay to the Landlord \$22,654.19*, which represents the amount of rent owing and compensation up to January 6, 2022.
16. The Tenants shall also pay to the Landlord \$64.11 per day for compensation for the use of the unit starting January 7, 2022 to the date the Tenants move out of the unit.
17. The Tenants shall also pay to the Landlord \$201.00 for the cost of filing the application.
18. If the Tenants do not pay the Landlord the full amount owing* on or before January 17, 2022, the Tenants will start to owe interest. This will be simple interest calculated from January 18, 2022 at 2.00% annually on the balance outstanding.
19. If the unit is not vacated on or before January 17, 2022, then starting January 18, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

20. 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 January 18, 2022.

January 6, 2022
Date Issued



Fabio Quattrociochi
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 July 18, 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 the attached Summary of Calculations.

**Schedule 1
SUMMARY OF CALCULATIONS**

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Amount the Tenants must pay:

Reasons for amount owing	Period	Amount
Arrears: (up to the termination date in the Notice of Termination)	November 1, 2020 to June 24, 2021	\$13,088.63
Less the amount the Tenants paid to the Landlord		-\$3,000.00
Plus compensation: (from the day after the termination date in the Notice to the date of the order)	June 25, 2021 to January 6, 2022	\$12,565.56
Amount owing to the Landlord on the order date: (total of previous boxes)		\$22,654.19
Additional costs the Tenants must pay to the Landlord:		\$201.00
Plus daily compensation owing for each day of occupation starting January 7, 2022:		\$64.11 (per day)
Total the Tenants must pay the Landlord:		\$22,855.19, + \$64.11 per day starting January 7, 2022

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