

Order under Section 69
Residential Tenancies Act, 2006

File Number: SOL-19679-21

In the matter of: 191 WILLOW ROAD
GUELPH ON N1H1W9

Between: The Corporation Of The County Of Wellington Landlord

and

Cynthia Tucker Tenant

2021 CanLII 125917 (ON LTB)

The Corporation Of The County Of Wellington (the 'Landlord') applied for an order to terminate the tenancy and evict Cynthia Tucker (the 'Tenant') for the following reasons:

- because the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully caused undue damage to the premises. The Landlord has also applied for an order requiring the Tenant to compensate the Landlord for the damage;
- because the Tenant or another occupant of the rental unit has committed an illegal act or has carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential complex; and
- because the Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was scheduled by videoconference on July 28, 2021 at 9:00am.

Only the Landlord attended the hearing when the matter was brought forward at 10:48am. The Landlord was represented by Peter Schroeder.

Also in attendance was the Landlord's witness, Amy Johnston.

Determinations:

1. By way of background this is a two-bedroom family unit in a housing complex for which the lawful monthly rent is \$163.00.
2. The Landlord's L2 application is based on two notices of termination: the N6 and N7 both of which were served to the Tenant on January 14, 2021 with a termination date of February 14, 2021. Both notices were based on the same incident that took place on November 25, 2020.

3. The Landlord's witness, Amy Johnston, is the property services manager. She testified that on November 25, 2020, at approximately 2:02am, the Landlord received a complaint from unit 193 that their door had been forcefully opened and the person who did this was their neighbour, the Tenant's male friend; the Landlord was also informed by the police that the assailant was charged with mischief. The police attended the site and conducted an investigation; they concluded that the assailant came from unit 191 based on the footprints marked on the snow. A copy of this email confirmation from the attending police officer was submitted to the Board as evidence.
4. Since then, there have been no further incidents from this unit, so in order to help the Tenant preserve their tenancy, the Landlord seeks a conditional order for the Tenant to refrain from this behaviour for the next twelve months.
5. As part of the Landlord's L2 application, a section 89(1) damage claim is included for the cost of fixing the damage to the door of the neighbouring unit as a result of the Tenant's guest's actions. The Landlord submitted two invoices that totalled \$1,355.79; the first invoice is in the amount of \$199.80 which was a temporary repair to the door shortly after the incident. Since the damage destroyed the door frame, the door had to be replaced and the cost to do so was in the amount of \$1,155.99, which was paid by the Landlord according to AJ's testimony.
6. The Landlord seeks a reimbursement of this amount in full and the reimbursement of the application filing fee.

ANALYSIS

7. Based on the uncontested evidence of the Landlord, I am satisfied that the Tenant and/or their guest has committed an illegal act, has wilfully caused undue damage and has seriously impaired the safety of another and that this act occurred on the residential complex. I say this based on AJ's uncontested evidence. By forcefully opening the door to another rental unit, without their consent, at approximately 1:00am, the Tenant's guest has seriously impaired the safety of the occupants in unit 193.
8. With respect to the damage claim, in order for an application to succeed under subsection 89(1) of the Act, a landlord must establish the following:
 - I. There was property damage to the rental unit or residential complex;
 - II. The damage is "undue" meaning that it is not normal wear and tear and it is not insignificant; and
 - III. The damage was a result of wilful or negligent conduct by the Tenant, occupant or guest.
9. In this context, I take the word "property" to refer to the physical objects like the walls, ceilings, floors, appliances and fixtures in a residential complex.

10. If all of these factors are met, then the Board can award the Landlord's the reasonable cost of repair, or the replacement cost if it is not reasonable for the damage to be repaired.
11. Based on the uncontested evidence of the Landlord, I find the damage to the door constitutes undue property damage not a result of normal wear-and-tear. By kicking in the door, the Tenant's guest knew or ought to have known it would cause significant damage to the door. With respect to the amount claimed by the Landlord, I find that is the cost incurred by the Landlord and has been paid by the Landlord. As I find the amount to be reasonable given my knowledge and experience in other similar matters, an order shall issue requiring the amount to be paid in full.
12. With respect to the Landlord's request for a conditional order, as I find that it benefits the Tenant by allowing her to preserve her tenancy, and given that there have been no further incidents, I find it appropriate to grant the Landlord's request.
13. 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 not be unfair to grant relief from eviction subject to the condition(s) set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.
14. This order contains all of the reasons for my decision within it. No further reasons shall be issued.

It is ordered that:

1. For the duration of the next twelve months, the Tenant, their occupant and/or their guest(s) shall refrain from the following conduct(s):
 - a) seriously impairing the safety of another at the residential complex or at the rental unit.
 - b) wilfully causing undue damage to the residential complex or to the rental unit;
and
 - c) committing an illegal act on the residential complex or at the rental unit.
2. If the Tenant fails to comply with paragraph 1 of this order, the Landlord may, without notice to the Tenant and within 30 days of the breach, apply to the Board pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant.
3. The Tenant shall pay to the Landlord \$1,355.79, which represents the reasonable costs of repairing and replacing the damage to the door.
4. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
5. The total amount owing under this order is \$1,541.79.

6. If the Tenant does not pay the Landlord the full amount owing on or before September 20, 2021, the Tenant will start to owe interest. This will be simple interest calculated from September 21, 2021 at 2.00% annually on the balance outstanding.



Sonia Anwar-Ali
Member, Landlord and Tenant Board

September 15, 2021
Date Issued

Southern-RO
119 King Street West, 6th Floor
Hamilton ON L8P4Y7

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