



Order under Section 69
Residential Tenancies Act, 2006

File Number: TEL-12137-20

In the matter of: 5, 52 MAIN STREET
PICTON ON K0K2T0

Between: Al Aiello Landlord

and

Arthur Ruttan Tenant

Al Aiello (the 'Landlord') applied for an order to terminate the tenancy and evict Arthur Ruttan (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes ('L1 application').

The Landlord also applied for an order to terminate the tenancy and evict 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 undue damage to the premises. The Landlord has also applied for an order requiring the Tenant to compensate the Landlord for the damage; and because the Landlord intends to do major repairs or renovations to the rental unit. The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date ('L2 application').

This application was heard by videoconference on April 27, 2021.

Only the Landlord and the Landlord's Legal Representatives, Dara Saunders and Karen Martin, attended the hearing. Sasha Snell ('SS') attended the hearing as a witness for the Landlord. As of 9:30 a.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the Board.

Determinations:

L1 application

1. The Tenant has not paid the total rent the Tenant was required to pay for the period from June 1, 2020 to April 30, 2021. Because of the arrears, the Landlord served a Notice of Termination effective August 9, 2020.
2. The Tenant is in possession of the rental unit.
3. The lawful monthly rent is \$534.00.

4. The Landlord collected a rent deposit of \$516.00 from the Tenant and this deposit is still being held by the Landlord.
5. Interest on the rent deposit is owing to the Tenant for the period from April 1, 2020 to August 9, 2020.
6. The Tenant has made no payments since the application was filed.
7. The Tenant owed the Landlord \$5,874.00 in arrears of rent to April 30, 2021. The rent for May and June 2021 has since become due. Therefore, the total owing by the Tenant as of the date of this order is \$7,143.00, which includes arrears of rent to June 30, 2021 (\$6,942.00) plus the application filing fee (\$201.00). If the Tenant made any payments to the Landlord after the hearing date, those payments must be deducted from the total owing in this order.
8. I have considered all of the disclosed circumstances in accordance with subsection 83 of the *Residential Tenancies Act, 2006* (RTA), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

L2 application

9. The Landlord gave the Tenant a Notice to End your Tenancy for Causing Serious Problems in the Rental Unit or Residential Complex with a termination date of August 5, 2020 (N7). The Landlord also gave the Tenant a Notice to End your Tenancy Because the Landlord Wants to Demolish the Rental Unit, Repair it or Convert It to Another Use with a termination date of July 1, 2020 (N13).
10. At the hearing, the Landlord withdrew its claim based on the N13 and chose to proceed with the L2 application based on the N7.
11. I find that the N7 lacks sufficient detail in regard to what damage was done to the rental unit or residential complex. Therefore, the Board lacks jurisdiction to terminate the tenancy based on the N7.
12. Given the above, the Landlord elected to proceed with its claim for damages only. The L2 application alleges that the Tenant caused damage to “all fixtures and appliances in the Kitchen and Bathroom”. It is estimated that the cost to repair or replace the damaged property is \$16,950.00. In support of this amount, the Landlord submitted a copy of an estimate from his general contractor, SS, in the above amount.
13. Section 89 of the Act provides that:
 - (1) A landlord may apply to the Board for an order requiring a tenant to pay **reasonable costs** that the landlord has incurred or will incur for the repair of or, where repairing is not reasonable, the replacement of damaged property, if the tenant, another occupant of the rental unit or person whom the tenant permits in the residential complex wilfully or negligently causes undue damage to the residential complex and the tenant is in possession of the rental unit. (emphasis added)

14. Based on the uncontested testimony of the Landlord and the SS (the general contractor), I am satisfied that the Tenant wilfully or negligently caused undue damage to the floors, kitchen cabinets and kitchen countertops that are beyond normal wear and tear. However, I am not satisfied that there was undue damage to the bathroom based on the pictures submitted at the hearing. While SS testified that unit was a “gut job”, the pictures of the bathroom in my view show a bathroom that is generally unclean. They do not show “undue damage” to the bathroom.
15. Having found that the Tenant wilfully or negligently caused undue damage to the floors, kitchen cabinets and kitchen countertops, I must determine whether the costs to repair or replace the damaged property is reasonable.
16. Based on the drawings of the rental unit submitted as part of the Landlord’s evidence, the rental unit is a studio apartment that is approximately 333 square feet. The kitchen area itself is approximately 80 square feet. The estimate submitted by the Landlord indicates that it would cost \$9,000.00 plus H.S.T to completely renovate and replace all fixtures and appliances in the kitchen.
17. I find that the estimate provided by SS is exaggerated and unreasonable based on my experience with the Board hearing similar cases, the pictures of the damaged items, and the size of the kitchen area. Although I find that the Tenant wilfully or negligently damaged the floors, kitchen cabinets and kitchen countertops, the Landlord’s estimate does not assist me in determining a reasonable amount to award for the above items. There is no breakdown or itemized list of costs for these items in the Landlord’s estimate.
18. Therefore, I am not prepared to grant the Landlord’s application with respect to the costs for the damaged items.
19. This order contains all the reasons for my decision. No further reasons shall be issued.

It is ordered that:

1. Unless the Tenant voids the order as set out below, the tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before June 27, 2021.
2. The Tenant shall pay to the Landlord \$6,167.10*, which represents the amount of rent owing and compensation up to June 16, 2021, less the rent deposit and interest the Landlord owes on the rent deposit.
3. The Tenant shall also pay to the Landlord \$17.56 per day for compensation for the use of the unit starting June 17, 2021 to the date the Tenant moves out of the unit.
4. The Tenant shall also pay to the Landlord \$201.00 for the cost of filing the application.

5. If the Tenant does not pay the Landlord the full amount owing* on or before June 27, 2021, the Tenant will start to owe interest. This will be simple interest calculated from June 28, 2021 at 2.00% annually on the balance outstanding.
6. If the unit is not vacated on or before June 27, 2021, then starting June 28, 2021, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
7. 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 June 28, 2021.
8. If, on or before June 27, 2021, the Tenant pays the amount of \$7,143.00** to the Landlord or to the Board in trust, this order for eviction will be void. This means that the tenancy would not be terminated and the Tenant could remain in the unit. If this payment is not made in full and on time, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. The Tenant may make a motion to the Board under subsection 74(11) of the Act to set aside this order if they pay the amount required under that subsection on or after June 28, 2021 but before the Sheriff gives vacant possession to the Landlord. The Tenant is only entitled to make this motion once during the period of the tenancy agreement with the Landlord.

2021 CanLII 98048 (ON LTB)

June 16, 2021
Date Issued



Khalid Akram
Member, Landlord and Tenant Board

Toronto East-RO
2275 Midland Avenue, Unit 2
Toronto ON M1P3E7

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 December 28, 2021 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 section A on the attached Summary of Calculations.

** Refer to section B on the attached Summary of Calculations.

**Schedule 1
SUMMARY OF CALCULATIONS**

File Number: TEL-12137-20

A. Amount the Tenant must pay if the tenancy is terminated:

Reasons for amount owing	Period	Amount
Arrears: (up to the termination date in the Notice of Termination)	June 1, 2020 to August 9, 2020	\$1,226.01
Plus compensation: (from the day after the termination date in the Notice to the date of the order)	August 10, 2020 to June 16, 2021	\$5,461.16
Less the rent deposit:		-\$516.00
Less the interest owing on the rent deposit:	April 1, 2020 to August 9, 2020	-\$4.07
Amount owing to the Landlord on the order date: (total of previous boxes)		\$6,167.10
Additional costs the Tenant must pay to the Landlord:		\$201.00
Plus daily compensation owing for each day of occupation starting June 17, 2021:		\$17.56 (per day)
Total the Tenant must pay the Landlord if the tenancy is terminated:		\$6,368.10, + \$17.56 per day starting June 17, 2021

B. Amount the Tenant must pay to void the eviction order and continue the tenancy:

Reasons for amount owing	Period	Amount
Arrears:	June 1, 2020 to June 30, 2021	\$6,942.00
Additional costs the Tenant must pay to the Landlord:		\$201.00
Total the Tenant must pay to continue the tenancy:	On or before June 27, 2021	\$7,143.00

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