

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

**File Number:** SOL-90803-18

**In the matter of:** 4, 130 HUNTER STREET W  
HAMILTON ON L8P1R1

**Between:** Alokin Of Hunter Street Inc. Landlord

**and**

Robert Rumley Tenant

Alokin Of Hunter Street Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Robert Rumley (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. The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard in Hamilton on April 3, 2018.

The Landlord's Legal Representative, Edwin Alexander (EA), and the Landlord's witnesses, Nancy DiBenedetto (ND) and Greg Jobb (GJ) attended the hearing. The Tenant also attended the hearing.

**Determinations:**

1. The Landlord provided photographs of the rental unit prior to the Tenant moving in on November 15, 2015. Based on the photographs, I am satisfied that the Landlord provided a rental unit, including its walls, floors and ceilings, in a good state of repair. There is no basis for the Tenant's allegation that the photographs were "photo-shopped".
2. GJ is the Landlord's general contractor. GJ inspected the rental unit on February 14, 2018. GJ described the following conditions in the rental unit: the vinyl floor and carpet at the front entrance were torn, there was a horrendous smell of dog urine, the trim on the wall had the appearance of having been chewed by the Tenant's dog; there were holes in the wall consistent with abuse; there were holes consistent with something having been pulled off the walls; and there was a hole in the bathroom.

3. The Tenant admitted that his dog damaged the trim when he was training him. The Tenant admitted that his dog eats and play in the front entrance and chewed the front entrance carpet. The Tenant admitted that the shelves on the wall fell off from the weight of his 75 inch TV, thereby leaving the holes on the wall. He admitted that he caused the hole in the shower wall when his elbow hit the wall during sexual horseplay with his girlfriend in the shower.
4. The Tenant denied responsibility for the hole in the bathroom ceiling. He testified that he saw the upstairs tenant play with and destroy the shower above him and water fell through the ceiling into his shower. He testified that the Landlord replaced the upstairs shower and repaired the upstairs floor but nothing was done about the hole on his bathroom ceiling.
5. The Tenant's evidence that the damaged shower upstairs somehow caused the hole in his bathroom ceiling, does not make sense. His testimony that he saw the upstairs tenant play with and destroy the upstairs shower, strongly indicates that the hole in the ceiling was present even before the upstairs shower was damaged. There was also no evidence of any repair request from the Tenant in regard to the hole in the ceiling. That the Tenant did not report the ceiling hole or request repair gives me pause in regard to his credibility.
6. The Tenant also testified that he took down the ceiling fan, on the instruction of the Landlord's maintenance staff, Crystal and Gabe, because there were electrical problems. Again, there was no evidence of any repair request regarding electrical issues with the ceiling fan or any request to take it down. Without such evidence, I am not persuaded that the Landlord would instruct the Tenant to take matters into his own hands.
7. I find that the Tenant or an occupant of the rental unit or a person permitted in the residential complex by the Tenant has wilfully or negligently caused undue damage to the rental unit, providing basis for termination of the tenancy under Section 62 of the *Residential Tenancies Act, 2006* (the "Act").
8. The Landlord also requested compensation for the cost to repair the damage. GJ provided a cost estimate in the amount of \$9,153.00 for all the necessary repairs to restore the unit in a good state of repair, broken down as follows:

|  |                   |
|--|-------------------|
| Remove flooring and replace              | \$4,900.00        |
| Patch and repair drywall holes and paint | \$2,800.00        |
| Fix trim                                 | \$400.00          |
| Subtotal                                 | \$8,100.00        |
| HST                                      | <u>\$1,053.00</u> |
| Total                                    | \$9,153.00        |

9. EA testified that half of the items to be repaired or replaced are "not brand new". EA did not provide evidence of the age of any of the items but left it to the Board's discretion to apply an appropriate discount.

10. Having reviewed the photographs, it is evident that the carpet and the floors were not brand new. I will apply a \$1,715.00 discount to the replacement cost for the flooring, which is 35% of the actual cost. While the walls appeared freshly painted in the photographs taken at the start of the tenancy, I have considered that the tenancy commenced in November 2015 and that some normal wear and tear would have occurred over time. I will apply a \$640.00 discount to the cost to repair the walls and the trim.
11. The Landlord is entitled to \$3,185.00 for the replacement cost of the flooring; and to \$2,560.00 for the repair of the walls and trim for a total of \$5,745.00. With HST in the amount of \$746.85, the Landlord shall be entitled to compensation in the sum of \$6,491.85.
12. The Landlord collected a rent deposit of \$650.00 from the Tenant and this deposit is still being held by the Landlord.
13. Interest on the rent deposit is owing to the Tenant for the period from November 1, 2015 to March 14, 2018
14. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated, as of May 13, 2018. The Tenant must move out of the rental unit on or before May 13, 2018.
2. The Tenant shall pay to the Landlord \$6,491.85, which represents the reasonable costs of repairing the damage and/or replacing the damaged property.
3. The Tenant shall pay to the Landlord \$402.39, which represents compensation for the use of the unit from March 15, 2018 to May 2, 2018, less the rent deposit and interest the Landlord owes on the rent deposit.
4. The Tenant shall also pay to the Landlord \$22.03 per day for compensation for the use of the unit from May 3, 2018 to the date the Tenant moves out of the unit.
5. The Tenant shall also pay to the Landlord \$175.00 for the cost of filing the application.
6. If the Tenant does not pay the Landlord the full amount owing on or before May 13, 2018, the Tenant will start to owe interest. This will be simple interest calculated from May 14, 2018 at 3.00% annually on the balance outstanding.

7. If the unit is not vacated on or before May 13, 2018, then starting May 14, 2018, 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 May 14, 2018.

**May 2, 2018**  
**Date Issued**

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Cristina De Leon-Culp  
Member, Landlord and Tenant Board

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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on November 14, 2018 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.