



Order under Section 69
Residential Tenancies Act, 2006

File Number: SWL-53452-21

In the matter of: 474 MISTY CRESCENT
KITCHENER ON N2B3V6

Between: Martine Thomas Landlord

and

Dakota Rothead Tenants
Nicole Golden

Martine Thomas (the 'Landlord') applied for an order to terminate the tenancy and evict Nicole Golden and Dakota Rothead (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 heard by way of video conference on October 25, 2021. The Landlord attended the hearing and was represented by Barrett Beaudoin, Paralegal. The Tenants were not present at the hearing despite being served with notice of hearing by the Board.

Determinations:

N5 notice:

1. The Landlord's application is based on an N5 notice served to the Tenants on July 20, 2021 with a termination date of August 16, 2021. The N5 notice alleges that the Tenants have wilfully or negligently damaged the rental unit.
2. The Landlord's N5 notice states that the Tenants were provided a fully furnished rental unit by the Landlord at the commencement of the Tenancy. On or about June 30, 2021 the Landlord observed the Tenants removing the Landlord's furniture into a U-Haul truck and did not return with the Landlord's furniture.
3. Section 62(1) 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.

4. It is clear in the wording of the Act that a notice of termination served pursuant to section 62(1) must include undue damage either wilfully or negligently caused by the Tenant. In this case, the Landlord is alleging that the Tenants have stole or removed the Landlord's belongings from the rental unit. This does not meet the definition of undue damages and as such, cannot be considered as a ground to terminate a tenancy under section 62(1) of the Act. For this reason, I find that the N5 notice is defective as the alleged conduct does not constitute willful or negligent damages, but rather theft.
5. As the N5 notice is deemed defective, the Board does not have the jurisdiction to order a termination of tenancy.

Compensation for Damages:

6. Section 89 (1) of the Act states in part

89 (1) A landlord may apply to the Board for an order requiring a tenant or former 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,

- (a) while the tenant or former tenant is or was in possession of the rental unit, the tenant or former tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant or former tenant wilfully or negligently causes or caused undue damage to the rental unit or the residential complex;

7. Although the Landlord's N5 notice of termination was deemed defective, the Landlord's legal representative advised that the Landlord would still be willing to seek compensation for additional damages plead on the L2 application, but not mentioned on the N5 notice. The Landlord was advised that they could not obtain an eviction order under this section alone.
8. The Landlord Martine Thomas provided oral testimony at the hearing and appeared as the Landlord's sole witness.
9. The rental unit is a single detached dwelling and the Tenant resides in the entire house.
10. Ms. Thomas testified that she has inspected the rental unit on May 24, June 30, July 1 and July 24, 2021. During these inspections the Landlord observed that the rental unit was excessively damaged by the Tenants and occupants.
11. The Landlord gave the following breakdown of the alleged damages:
 - (a) Damaged bricks – The Tenants installed security cameras on the exterior of the rental unit without the Landlord's consent. The installation of the security cameras resulted in drilling into the exterior brick.
 - (b) Excess amount of garbage stored both in the interior and exterior portion of the rental unit.

- (c) The Baseboards of the rental unit are damaged and appear to have bite or chew marks from the Tenants pets.
 - (d) The laminate flooring throughout the rental unit is excessively scratched and stained by animal feces not cleaned up.
 - (e) The walls the in the rental unit have holes and heavy scratches throughout the rental unit.
 - (f) The carpet in the basement is heavily stained by animal feces and urine that was not cleaned.
 - (g) The stairs in the rental unit is heavily scratched and scuffed due to the Tenants pets.
12. The Landlord submitted no pictures of the alleged damages but submitted into evidence an estimate from Pella Construction Inc. dated July 24, 2021 (LL exhibit #1). The Invoice outlines the repairs needed to the rental unit and estimates a total cost of \$25,538.00.
13. The Landlord testified that they have not yet completed the repairs on the rental unit as they are waiting for the Tenants to vacate the rental unit before conducting the repairs. The Landlord advised that the parties currently have a hearing scheduled for non-payment of rent. The Landlord stated that the repairs will be completed once the Tenants have vacated the rental unit to ensure that no further damages are done.

Analysis:

14. Based on the uncontested evidence before the Board, I am satisfied that the Tenants, occupants or someone permitted into the rental unit by the Tenants have wilfully and/or negligently damaged the rental unit. The Tenants were not present at the hearing to dispute the Landlords oral testimony and the Landlord was consistent throughout her testimony.
15. I am satisfied that the Landlord will incur costs of repairs for damages as a result of the Tenants conduct as this is supported by an estimate obtained by a contractor. However, I will not grant the Landlord's request for \$1,000.00 for garbage removal. I do not find that garbage removal constitutes undue damages, but rather an administrative out of pocket expense.
16. As such, the Landlord shall only be awarded \$24,538.00 in compensation for out of pocket expenses incurred as a result of wilful or negligent damage to the rental unit.

It is ordered that:

1. The Tenant shall pay to the Landlord \$24,538.00, which represents the reasonable costs of repairing the damaged items.
2. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
3. Total amount the Tenant owes the Landlord is \$24,724.00

4. If the Tenant does not pay the Landlord the full amount owing on or before January 17, 2022 the Tenant will start to owe interest. This will be simple interest calculated from January 18, 2022 at 2.00% annually on the balance outstanding.

January 6, 2022
Date Issued



Fabio Quattrociochi
Member, Landlord and Tenant Board

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