



I hereby certify this is a true copy of an Order dated
Feb 8, 2024
Landlord and Tenant Board

**Order under Section 69 / 89
Residential Tenancies Act, 2006**

Citation: Duncan v Caughlin, 2024 ONLTB 9287

Date: 2024-02-08

File Number: LTB-L-056167-23

In the matter of: LOWER, 132 RICHARD ST
SARNIA ON N7T1S7

Between: Destiny Duncan Landlord
Brandon Vanderwel

And

Craig Caughlin Tenant

Destiny Duncan and Brandon Vanderwel (the 'Landlord') applied for an order to terminate the tenancy and evict Craig Caughlin (the 'Tenant') 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 and the act or omission occurred in the residential complex;
- 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 also claimed compensation for each day the Tenant remained in the unit after the termination date.

The Landlord also applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

This application was heard by videoconference on January 24, 2024.

Only the Landlord's legal representative, Kevin Kok, and the Landlord's witnesses, Kevin Miller and Karen Eckel, attended the hearing.

The Tenant did not attend the hearing throughout the entire hearing block. The Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB.

The Landlord's legal representative informed the Board that the Tenant has been incarcerated; however, the Landlord sent the Notice of Hearing and the Landlord's evidence package to the Tenant at the correctional facility by courier on January 15, 2024.

There was no record of a request to adjourn the hearing. I was satisfied that the Tenant received sufficient notice of the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The Tenant resides in the basement of the residential complex.

N7 Notice of Termination: serious impairment of safety and wilful damage

4. On July 18, 2023, the Landlord gave the Tenant an N7 notice of termination. The notice of termination includes the following allegations:

On June 9, 2023 the Landlord's Agent discovered that the Tenant caused burn marks by a torch on the walls, carpet and wires, in the basement stairway area accessible only by the Tenant.

On June 14, 2023 the Landlord's Agent discovered that the Tenant had removed the smoke alarm.

On June 29, 2023 the Landlord's Agent discovered two mattresses stored in the basement were burnt by a small torch.

On July 19, 2023 the Landlord's Agent discovered that the wiring, water meter and junction boxes were burnt by the Tenant with a small torch.

5. The Landlord's witnesses, who had first hand knowledge of the facts, testified with respect to the allegations set out on the Notice of Termination. Their testimony was corroborated by photographic evidence. They also testified that an electrician had to disable the electrical circuits, and make repairs, as the Tenant's actions put other tenants at a serious risk of harm by fire.
6. Based on the uncontested evidence before me, I am satisfied that the Tenant or a person permitted in the residential complex by the Tenant has seriously impaired the safety of others and his own, This conduct occurred in the residential complex.
7. I am also satisfied that The Tenant or a person permitted in the residential complex by the Tenant has wilfully caused undue damage to the rental unit and residential complex by burning the walls, mattresses, electrical wires and other items.
8. The Landlord presented an invoice in the amount of \$1,209.67 for repairs and an estimate for the repair of the existing damage in the amount of \$5,000.00 to \$7,000.00. Although the estimate was not itemized, the photographic evidence suggested that the upper limit of the estimate is reasonable. As such, I am satisfied that the Landlord has incurred and will incur

reasonable costs of \$8,209.67 to repair the damage and replace property that was damaged and cannot be repaired.

Daily compensation

9. The Tenant was required to pay the Landlord \$1,789.12 in daily compensation for use and occupation of the rental unit for the period from December 1, 2023 to January 24, 2024.
10. Based on the Monthly rent, the daily compensation is \$32.88. This amount is calculated as follows: \$1,000.00 x 12, divided by 365 days.
11. The Landlord collected a rent deposit of \$1,000.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$26.64 is owing to the Tenant for the period from January 1, 2023 to January 24, 2024.
12. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.
13. As such, the Tenant owes the Landlord \$762.48 in daily compensation up to January 24, 2024 and thereafter \$32.88 from January 25, 2024 until the Tenant vacates the rental unit.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Relief from eviction:

15. The Landlord's witnesses testified that the Tenant's conduct has not improved after the Notice of Termination was given to him. On the contrary, on November 23, 2023 the Tenant caused a fire to the fence on the premises of the residential complex.
16. Considering the nature of the Tenant's conduct, I inquired whether there are any issues of accommodation under the Human Rights Code. The Landlord's legal representative responded that the Landlord was aware that the Tenant is in receipt of Ontario Disability Support Plan Benefits; however, the Landlord is unaware of the specific nature of the Tenant's disability. Furthermore, the Landlord reached out to the Tenant and to the Tenant's worker; however, the Tenant was not willing to cooperate. As such, I am not satisfied that there was sufficient evidence to trigger the Landlord's duty to accommodate in these circumstances.
17. Considering the fact that the Tenant is in a correctional facility, the eviction will be delayed for several days, in order to give the Tenant an opportunity to receive the order before the date of the eviction. The Landlord's legal representative undertook to send the order once issued to the Tenant via courier.
18. 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 postpone the eviction until February 17, 2024 pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before February 17, 2024.

2. If the unit is not vacated on or before February 17, 2024, then starting February 18, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. 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 February 18, 2024.
4. The Tenant shall pay to the Landlord \$762.48, which represents compensation for the use of the unit from December 1, 2023 to January 24, 2024, minus the last month's rent deposit and interest accrued thereon.
5. The Tenant shall also pay the Landlord compensation of \$32.88 per day for the use of the unit starting January 25, 2024 until the date the Tenant moves out of the unit.
6. The Tenant shall pay to the Landlord \$8,209.67, which represents the reasonable costs of repairing the damage and replacing the damaged property.
7. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
8. The total amount the Tenant owes the Landlord is \$9,158.15.
9. If the Tenant does not pay the Landlord the full amount owing on or before February 17, 2024, the Tenant will start to owe interest. This will be simple interest calculated from February 18, 2024 at 7.00% annually on the balance outstanding.



February 8, 2024
Date Issued

Jana Rozehnal
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,
Toronto ON M7A 2G6

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 of the Tenant expires on August 18, 2024 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.