



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

**File Number:** SOL-22259-21

**In the matter of:** 62, 5 LAMOREAUX STREET  
HAMILTON ON L8R1T9

**Between:** Lamoreaux Gardens Landlord

**and**

David Miller Tenant

Lamoreaux Gardens (the 'Landlord') applied for an order to terminate the tenancy and evict David Miller (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.

This application was heard by way of video conference on September 22, 2021. Only the Landlord's Legal Representative, Joey Kay attended the hearing. As of 11:28, the Tenant was not present or represented at the hearing although properly served notice of the hearing by the Board.

**Determinations:**

*N5 Notice of Termination*

1. At the hearing, the Landlord's Representative sought the consent of the Board to withdraw this portion of the application as the Tenant vacated the rental unit on May 31, 2021. The Board consented to this request.

*Application for Damages*

2. The Landlord's L2 application is based on damages for which the Landlord is seeking reimbursement. It is the Landlord's position that the Tenant caused undue willful or negligent damage to the rental unit because of a fire that occurred on February 26, 2021.
3. The Landlord's Representative submitted that the on February 26, 2021, the Tenant's mother was alone in the rental unit. She fell asleep while smoking a cigarette. When the Tenant's mother woke up, she left the unit without realizing her cigarette was still burning. As a result of leaving the cigarette burning unattended, a fire broke out in the rental unit. The Tenant learned of the fire when he returned home that evening. Emergency services

were called to extinguish the fire and ensure the safety of others in the residential complex.

4. The Landlord's Representative entered in evidence pictures of the damage caused by the fire. The pictures depict extensive damage to the entire rental unit. There is not one portion of the rental unit that was not damaged by the fire.
5. The Landlord's Representative submitted the Landlord is seeking an order from the Board to have the Tenant reimburse the following cost related to the fire damage:
  - \$237.30 (invoice on file) for an emergency call to remove electrical panel fuses and disconnect hydro services.
  - \$790.44 (invoice on file) for after hours fire protection and security call.
  - \$700.00 (invoice on file) for bulk removes of Tenant's damaged furniture.
  - \$292.56 (invoice on file) for disposal bins for damage removal.
  - \$250.00 (invoice on file) for cleaning residential complex common areas after the fire.
  - \$118.65 for fire technician services to repair in-suite electrical.
  - \$21.40 (invoice on file) for cleaning supplies to remove damaged items.
  - \$1,084.80 (invoice on file) for after hours call to repair and board up 4 windows broken during the fire.
  - \$5,000.00 (invoice on file) for the cost of the Landlord's insurance deductible.

TOTAL: \$8,495.15

6. The Landlord's Representative submitted that the Landlord's insurance company paid for the extensive repairs to the rental unit, however the Landlord had to pay the insurance deductible to have the have the repairs completed. The Landlord's Representative submitted that while this is an expense claim and not actual damage, the Landlord should be reimbursed as the cost is directly related to the damage caused by the Tenant's mother who was permitted in the rental unit by the Tenant. I agree with the Landlord's Representative that the Landlord should be reimbursed for the insurance deductible because it likely lesser than the amount the Landlord would have had to claim if the repairs were not put through the Landlord's insurance and the damage repair was paid out of pocket.

7. On a balance of probabilities, I am satisfied that the Tenant or someone permitted in the residential complex by the Tenant caused undue willful or negligent damage to the rental unit. In making this finding, I considered the compelling uncontested evidence of the Landlord's Representative that on February 26, 2021, the Tenant's mother was alone in the rental unit and fell asleep with a lit cigarette. Once the Tenant's mother woke up, she left the rental unit leaving the lit cigarette burning which caused the fire.
8. Given my finding above, I further find that the Landlord is entitled to compensation from the Tenant for reimbursement of the out of pocket expenses incurred because of the fire. The amount I find the Landlord is eligible to be reimburse is \$8,355.10. This amount is less than what was claimed by the Landlord's Representative at the hearing. However, I note, the Landlord's application for damage states the Landlord would be seeking reimbursement for damages in the amount of \$8,355.10. This is the amount for which the Tenant was put on notice. In the absence of the Tenant attending the hearing, it would be unfair to award a higher amount than that for which notice was given.

**It is ordered that:**

N5 Notice of Termination

1. The Landlord's N5 Notice of Termination is withdrawn.

Application for Damages

2. The Tenant shall pay to the Landlord \$8,355.10, which represents the reasonable costs of repairing the damages and replacing the damaged property.
3. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
4. If the Tenant does not pay the Landlord the full amount owing on or before October 16, 2021, the Tenant will start to owe interest. This will be simple interest calculated from October 17, 2021 at 2.00% annually on the balance outstanding.



\_\_\_\_\_  
Dawn Wickett  
Member, Landlord and Tenant Board

**October 5, 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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on April 17, 2022 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.