



Order under Section 69
Residential Tenancies Act, 2006

File Number: CEL-02095-21

In the matter of: LOWER / 1, 5 CHURCH STREET
PENETANGUISHENE ON L9M1A7

Between: Todd Hutchinson Landlords
Ashley Bates

and

Amber Lock Tenants
Shannon King

Todd Hutchinson and Ashley Bates (the 'Landlords') applied for an order to terminate the tenancy and evict Shannon King and Amber Lock (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 Landlords has also applied for an order requiring the Tenants to compensate the Landlords for the damage; because they, another occupant of the rental unit or someone they permitted in the residential complex have wilfully caused undue damage to the premises and/or used the rental unit or the residential complex in a manner that is inconsistent with use as a residential premises and that has caused or can be expected to cause significant damage. The Landlords has also applied for an order requiring the Tenants to compensate the Landlords for the damage; because they, another occupant of the rental unit or someone they permitted in the residential complex have substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlords or another tenant; and because they, another occupant of the rental unit or a person the Tenants permitted in the residential complex have seriously impaired the safety of any person. The Landlords also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on November 4, 2021.

Only the Landlords, the Landlords' witness M. Barrett and the Landlords' representative A. MacSpurran attended the hearing.

Determinations:

1. The residential complex is comprised of two units. The Tenants have resided in the Lower unit since November 2019.
2. The Landlords served the Tenants with a Form N7 on June 20, 2021 with a notice of termination date of July 1, 2021, as well as a Form N5 on June 20, 2021 with a notice of termination date of August 1, 2021.

3. The Landlords served a Form N7, on the basis the Tenants have wilfully caused undue damage to the rental unit or residential complex; the Tenants have seriously impaired the safety of another person within the residential complex, and the Tenants have used the rental unit in a way that is inconsistent with its use as a residential premises and thus has caused or can be expected to cause serious damage.

Wilful Damage: N7

4. Section 63(1) of the Act provides that a notice of termination may be given if an act or omission of the Tenant, another occupant or person permitted in the residential complex by the Tenant, wilfully causes undue damage to the rental unit or the residential complex.
5. I find, on a balance of probabilities, that the Tenants have wilfully caused undue damage to the rental unit.
6. The Landlords submitted into evidence various photos of the interior of the rental unit, showing the condition of the property shortly before the Tenants moved in. The property looked to be in good repair, clean, and ready for occupancy
7. The Landlords testified that much of the rental unit is now in need of significant repairs due to the Tenants' actions. In particular, the Landlord submits that the Tenants caused damage to various interior doors, the door trim, the interior walls, the kitchen appliances, the window and door screens, and the kitchen cupboard doors.
8. The Landlord tendered various photographs taken in June 2021 showing numerous indentations and holes on the walls, the interior doors, the door trims and floors. The damage to the walls, doors and door trims is extensive and evident throughout nearly the entire unit. In some instances, the holes in the drywall were filled with plaster, but in other instances, they were not. Given the large number of indentations and holes throughout nearly the entire rental unit, as well as their large size, it is clear that the damage was deliberate and the result of the heavy application of force, most likely from a punch or kick, or an object such as a knife or hammer.
9. The Landlords also testified that screens have been ripped from the doors and windows, and the kitchen fridge was damaged. The Landlords produced a photo showing a fridge containing several indentations, once again due to the heavy application of force, as well as a ripped screen.
10. The Landlords also testified that there are missing kitchen cabinets, which was supported by photographic evidence showing 3 missing cabinets. The recent photos of the Kitchen stand in stark contrast to the kitchen photos taken prior to the Tenants' move-in, where there are no wall markings, no indentations on the fridge and no cabinets missing.
11. It is clear the rental unit will require extensive, if not complete interior remedial work as a result of the Tenants' actions. The damage has not been repaired and the Landlords indicated that the damage has worsened since the Tenants became aware of the

Landlords' intention to sell the rental unit. The Landlord testified that the Tenants were uncooperative with realtors and had used vulgar and aggressive language with the Landlords upon finding out the property would be listed for sale

12. On a balance of probabilities, I am satisfied based on the Landlords' uncontested testimony, supported by photographic evidence, that the rental unit's walls, doors, and fridge were unduly damaged due to the numerous holes and indentations. I also find the interior screen, kitchen cabinets and kitchen fridge were also unduly damaged. This damage is all contained within the Tenant's unit. In the absence of an alternative explanation, I am prepared to draw the inference that the Tenants or someone they permitted in the unit caused this damage. Moreover, by its very nature, I find that the damage was clearly done wilfully, and due to its extensive nature, I find that it is undue.
13. The Landlord produced a quotation for materials alone from Rona dated November 3, 2021, in the amount of \$12,766.83. I find this amount to be a most reasonable estimate of the cost of repairing the damage. The Landlord did indicate she has entered into a conditional agreement to sell the unit and has not incurred this expense as of the date of the hearing. Regardless, as the owner of the property, I find at the very least, the Landlords have suffered a loss in value for this amount.
14. Given my finding that the Landlords have proven on a balance of probabilities that the Tenants wilfully committed the undue damage, I need not make a finding as to whether the Tenants have seriously impaired the safety of another person within the residential complex, or whether the Tenants have used the rental unit in a way that is inconsistent with its use as a residential premises and thus has caused or can be expected to cause serious damage.

Wilful or Negligent Damage: N5

15. The Landlords also served the Tenants with a Form N5, on the basis the Tenants have wilfully or negligently caused undue damage to the rental unit or residential complex. The Landlords' Form N5 alleges similar allegations as contained in the Form N7, such as the ripped screens, the removal of kitchen cabinet doors, as well as holes in the drywall.
16. While this is the first N5 served upon the Tenants, the Tenants did not void the Landlords' Form N5 by repairing the damaged property, or paying the estimated amount to repair or replace the damaged property.
17. As outlined in my reasons above and given my findings of the more stringent test for "wilful" damage under the Landlord's form N7, I also find, on a balance of probabilities, that the Tenants have wilfully or negligently caused damage to the rental unit for the purposes of the Landlords' Form N5.
18. Given my finding that there has been wilful or negligent damage, I will not make a finding as to whether the Tenants or someone living with the Tenants have substantially interfered with another tenant or the Landlords' reasonable enjoyment of the residential complex and /or lawful rights, privileges, or interests, or whether the Tenants used the

rental unit in a manner that is inconsistent with its use as a residential premises and caused serious damage.

Section 83.

19. The Landlord indicated they have a conditional offer to sell the property and thus there is some urgency in bringing this application. It was also revealed as part of the Landlords' evidence that the Tenants have at least 1 child.
20. Section 83 requires that we consider all the circumstances, including the Tenants' and the Landlords' situations to determine if it would be appropriate to grant section 83 relief from eviction. 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. The Tenants did not attend the hearing, and thus did not provide any evidence that may be relevant to my determination under s. 83.

It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated, as of January 4, 2022. The Tenants must move out of the rental unit on or before January 4, 2022.
2. The Tenants shall pay to the Landlords \$12,766.83, which represents the reasonable costs of repairing the damage and replacing the damaged property.
3. The Tenants shall also pay to the Landlords \$201.00 for the cost of filing the application.
4. If the Tenants do not pay the Landlords the full amount owing on or before January 4, 2022, they will start to owe interest. This will be simple interest calculated from January 5, 2022 at 2.00% annually on the balance outstanding.
5. If the unit is not vacated on or before January 4, 2022, then starting January 5, 2022, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or after January 5, 2022. The Sheriff is requested to expedite the enforcement of this order.



December 13, 2021
Date Issued

Peter Nicholson
Member, Landlord and Tenant Board

Central-RO
3 Robert Speck Pkwy, 5th Floor

Mississauga ON L4Z2G5

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 July 5, 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.