



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

**Citation:** Bhalla v Wilson, 2024 ONLTB 9279

**Date:** 2024-02-06

**File Number:** LTB-L-062374-22

**In the matter of:** UNIT 4, 300 BALMORAL AVE N  
HAMILTON ON L8L7S4

**Between:** Subhash Bhalla Landlord

**And**

Bobbie Wilson Tenant

Subhash Bhalla (the 'Landlord') applied for an order to:

- Terminate the tenancy and evict Bobbie Wilson (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (L1 application).
- Terminate the tenancy and evict 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 damage to the premises (L2 application).
- Require 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 (L2 application).

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on January 9, 2024.

Only the Landlord, the Landlord's Legal Representative, Edwin Alexander, and a witness for the Landlord, Don Oates, attended the hearing.

The Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

**Determinations:**

Preliminary Issue

1. The Landlord submitted that the named tenant Lawrence Davies deceased November 15, 2023. However, the tenancy has continued with the deceased's wife, Bobbie Wilson, being considered a Tenant pursuant to subsection 3(1) of O.Reg 516/06 under the *Residential Tenancies Act, 2006* (the 'Act').
2. The Landlord testified the deceased's wife has access to the mailbox for the rental unit. I am satisfied Bobbie Wilson would have received the notice of hearing originally addressed to Lawrence Davies.
3. The Landlord requested the consent of the Board to amend the application to reflect the current Tenant's name. I consented to the amendment.

L1 application

4. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
5. The Landlord testified that the Tenant has keys and continues to visit the rental unit but does not appear to be living there. The hydro has been cut off since June 2023 and the unit is being used a storage facility. The Tenant continues to attend the unit, but to the Landlord's knowledge, the Tenant does not sleep there.
6. Given the evidence before me, I find that the Tenant has not abandoned the rental unit and as of the hearing date, the Tenant was still in possession of the rental unit.
7. The lawful rent is \$740.00. It is due on the 1st day of each month.
8. Based on the Monthly rent, the daily rent/compensation is \$24.33. This amount is calculated as follows: \$740.00 x 12, divided by 365 days.
9. The Tenant has paid \$8,880.00 to the Landlord since the application was filed.
10. The rent arrears owing to January 31, 2024 are \$3,500.00.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. There is no last month's rent deposit.
13. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

L2 application

14. On October 4, 2022 the Landlord gave the Tenant a voidable, first N5 notice with a termination date of October 24, 2022. The notice alleges the Tenant, or their guest or occupant, caused undue damage to the rental unit including damages to exterior and interior doors, and drywall. The notice estimates the cost to replace or repair the damages would be \$4,896.00.
15. The Tenant had the opportunity to void this notice by repairing the damage or paying the Landlord \$4,896.00 within seven days of being served the N5 notice. In this case, the voiding period was October 5, 2022 to October 11, 2022.
16. The Landlord testified the Tenant did not pay the Landlord \$4,896.00 nor did the Tenant complete the repairs themselves. Therefore, the Tenant did not void the N5 notice in accordance with section 62(3) of the Act.
17. The Landlord and a handyman, Don Oates (“DO”) attended the rental unit on August 6, 2022 for an inspection of the damages.
18. DO testified during the inspection, he noticed holes in the walls and doors, the tile floor broken, and laminate floor separating.
19. The Landlord submitted an estimate from DO which quoted \$4,896.00 for:
  - Replace doors
    - Bedroom, living room, bathroom
    - 2 closets
  - Repair all drywall and paint all rooms
  - Repair and replace damaged flooring tile – laminate
20. DO testified that this quote would probably be \$1,000.00 more since the cost of material has increased.
21. The Landlord did not provide any photos of the unit prior to the alleged damages, nor did the Landlord provide any photos from the inspection on August 6, 2022 to show the extent of the damage DO was quoting needed repair. I accept the Landlord’s and DO’s uncontested oral evidence regarding the extent of the damage to the unit.
22. However, due to the lack of evidence regarding the state of the unit prior to the Tenant occupying the unit, I do not find the Landlord has established undue damage caused wilfully or negligently by the Tenant, their guest or occupant. Therefore, the Landlord’s L2 application for termination of the tenant due to undue damage cannot succeed.
23. With respect to the Landlord’s claim for compensation for the Landlord’s reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property, as mentioned above, the state of the rental unit prior to the Tenant occupying the space has not been established. The Landlord has incurred a charge of \$1,130.00 to replace the exterior door of the rental unit 4 days before the hearing but did not provide a receipt. The Landlord has not completed any of the repairs in the N5. Therefore, I cannot find the Tenant’s responsible for the monetary claim for damages.

**It is ordered that:**

1. The Landlord's L2 application is dismissed.
2. In accordance with the L1 application, the tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
3. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
  - \$4,426.00 if the payment is made on or before February 17, 2024. See Schedule 1 for the calculation of the amount owing.
4. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after February 17, 2024 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
5. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before February 17, 2024**
6. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$3,164.97. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
7. The Tenant shall also pay the Landlord compensation of \$24.33 per day for the use of the unit starting January 10, 2024 until the date the Tenant moves out of the unit.
8. 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.
9. 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.
10. 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.

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**February 6, 2024**

**Date Issued**

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Elena Jacob

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 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.

**Schedule 1  
SUMMARY OF CALCULATIONS**

**A. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before February 17, 2024**

Rent Owing To February 29, 2024	\$13,120.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$8,880.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$4,426.00</b>

**B. Amount the Tenant must pay if the tenancy is terminated**

Rent Owing To Hearing Date	\$11,858.97
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$8,880.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$0.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$3,164.97</b>
Plus daily compensation owing for each day of occupation starting January 10, 2024	\$24.33 (per day)

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