



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

Citation: Native People of Thunder Bay Development Corporation v Ritch, 2023 ONLTB 75912

Date: 2023-12-05

File Number: LTB-L-073264-22

In the matter of: 115 BRENT ST
THUNDER BAY ON P7A5T7

Between: Native People of Thunder Bay Development Corporation Landlord

And

Kesha Ritch Tenants
Terrence Masakeyash

Native People of Thunder Bay Development Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Kesha Ritch and Terrence Masakeyash (the 'Tenants') because:

- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully or negligently caused damage to the premises.

The Landlord also applied for an order requiring the Tenants 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 Tenants, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

This application was heard by videoconference on August 22, 2023.

Only the Landlord's Agent Cindy Pareigis attended the hearing.

As of 11:13 a.m., the Tenants were 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:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and part of the claim for compensation in the application. Therefore, the tenancy is between the Landlord and the Tenants is terminated effective December 31, 2022, the date that the Landlord became aware that the Tenants had vacated the rental unit. The Tenants must also pay to the Landlord \$5,929.98 for reasonable out-of-pocket costs incurred to repair undue damage caused wilfully or negligently by the Tenants, another occupant of the rental unit or someone the Tenant permitted in the residential complex.
2. The Tenants were in possession of the rental unit on the date the application was filed. N5 Notice of Termination - Wilful or Negligent Damage
3. On November 15, 2022, the Landlord gave the Tenants a first, voidable N5 notice of termination (1st N5 notice) with a termination date of December 31, 2022. The 1st N5 notice alleged that the Tenants or someone visiting or living with the Tenants has wilfully damaged the rental unit or the rental complex. It states that on November 1, 2022 a murder occurred at the rental unit. After the unit was released by police, an inspection of the rental unit on November 8, 2022 revealed extensive damage to the unit requiring clean up and repair. The Landlord's Agent submitted that she believed but was unsure that the Tenant Kesha Ritch (KR) was incarcerated. She stated that the locks were changed to secure the unit, and a notice was posted on the door informing the Tenants that they could obtain keys from the superintendent. Despite attempts to contact the Tenants and emailing the invoices and work orders to the Tenant KR, the Landlord received no response.
4. Therefore, the Landlord was allowed to give the Tenants a second, non-voidable N5 notice of termination under section 68 of the *Residential Tenancies Act, 2006* (Act).
5. On November 25, 2022, the Landlord gave the Tenants a second N5 notice of termination. The notice of termination contains the following allegations:
 - November 1, 2022 the Landlord received information that there had been a murder at the unit
 - On November 8, 2022 the Landlord inspected the unit and found the unit required clean up, repairs, and removal of debris
 - On November 15, 2022, the Tenants were provided with a quotation for cleaning and "site restoration"
 - As of November 25, 2022 the Tenants had not contacted the Landlord with respect to repairs or clean up
6. The 2nd N5 notice does not comply with the requirements of section 68(1)(b) as it does not allege conduct that is different from that on the 1st N5 and is therefore invalid.
7. I find, however, that it would not be unfair to consider the allegations on the 1st N5 notice. The Tenants were made aware of the issues and had an opportunity to address them.

8. The estimate that was delivered with the first N5 notice claims: “removal of all debris; site restoration including cleaning, painting and updated kitchen cabinets and counter; biohazard removal” in the amount of \$45,816.98. This amount is above the jurisdictional limit of the Board, which is \$35,000.00.
9. The Landlord’s Agent stated that the actual expenses were significantly lower than the estimate and totalled \$17,563.08. She submitted invoices into evidence for each of the expenses and stated that she had emailed the invoices and work orders to the Tenant Kesha Ritch.
10. The Landlord’s Agent stated that the Landlord became aware from the police that there had been a murder on November 1, 2022 in the unfinished basement of the rental unit, which is a single-family home. When the unit was released by the police, the superintendent inspected the unit and found extensive damage.

Compensation for damages

11. With respect to the monetary claims arising from the death that occurred in the rental unit, there is no evidence to indicate that the Tenants were in any way responsible. For this reason, I find that the damages are too remote to hold the Tenants responsible and that they cannot constitute wilful or negligent damage.
12. For damage elsewhere in the rental unit, the Landlord provided an itemized list, invoices, and indicated which portion of an invoice was allocated to the Tenants. The Landlord’s Agent explained that ordinary repairs would have been required to some degree after the tenancy ended had there not been undue damage. The Landlord also submitted photos of the rental unit upon inspection.

Accepted expenses

13. The Tenants or an occupant of the rental unit or a person permitted in the residential complex by the Tenants have wilfully or negligently caused undue damage to the rental unit in the following ways and I accept that the following expenses were incurred by the Landlord.
 - January 14, 2023 invoice from Northern Window Manufacturing (\$1,628.16): supply and install new entrance door. The Landlord’s Agent explained that while the police made entry to the rental unit by a door kick, the door that was damaged and needed to be replaced was a different door. I find based on the Landlord’s uncontested evidence, on a balance of probabilities, it is more likely that not that this expense was incurred by the Landlord due to damage caused by the Tenants or someone that they permitted in the rental complex.
 - January 21, 2023 invoice from That Garbage Guy (\$534.75): Yard cleanup – dump run. “Camper trailer demolish and removal, cleanup of front yard and junk removal.” While the Landlord did not submit photos into evidence showing the outside of the

rental unit, the inside of the unit shows garbage and discarded items throughout. I find on a balance of probabilities, based on the uncontested submissions of the Landlord's Agent, that it is more likely than not that the yard required extensive cleanup as a result of wilful or negligent conduct of the Tenants.

- February 14, 2023 invoice from B&B Cabinets (\$8,446.08): new kitchen cabinets and countertop. The amount allocated to the Tenants was \$4,223.04. The Landlord submitted photos into evidence which show cabinet doors which were broken and removed or were missing. I find that while the cabinets appear to be dated, the damage is far beyond normal wear and tear in a rental unit. From the evidence presented, however, I am unable to find that they were beyond repair and needed to be fully replaced, and therefore find that it is reasonable to allocate 25% of the cost to the Tenants to replace the cabinets (\$2,111.52).
- June 14, 2023 invoice from Home Hardware (\$1,102.76): replace vanity, 4 interior doors, range hood, 3 passage sets. The Landlord's photos show the bathroom vanity, which appears to have been cracked. There is garbage in the sink. There is a photo of the range hood, which has been pulled down and partially detached from the upper cabinets. While there are no photos of the interior doors, I find that on a balance of probabilities, when the general state of damage and disrepair of the unit is considered, it is more likely than not that interior doors were wilfully or negligently damaged by the Tenants and required replacing.
- June 22, 2023 invoice from Power Vac (\$390.00): duct cleaning, extra charge due to garbage in ducts. I find that based on the general condition of the unit and the garbage throughout, it is more likely than not that there was garbage in the ducts. I find, however, that the Tenants are only responsible for the additional cleaning fee of \$150.00 incurred by the Landlord which was noted on the invoice.
- June 22, 2023 invoice from Home Hardware (\$22.49): replace shower brackets. Although there are no photos in evidence, I find that on a balance of probabilities, when the general state of damage and disrepair of the unit is considered, it is more likely than not that the shower rod was damaged as a result of the Tenants' wilful or negligent conduct.
- June 28, 2023 invoice from Langen Auto and Plate Glass (\$267.32): rescreens x 6. Although there are no photos in evidence, I find that on a balance of probabilities, when the general state of damage and disrepair of the unit is considered, it is more likely than not that windows screens were damaged as a result of the Tenants' wilful or negligent conduct and that the Landlord incurred this expense.
- July 18, 2023 invoice from Chimo Building Centre (\$112.98): repair cabinet door and towel bar. The Landlord submitted a photo of the bathroom which shows the

medicine cabinet with a missing door and a hole in the wall next to the sink where there was presumably a towel bar. I find that the Tenants or someone that the Tenants permitted in the rental unit wilfully or negligently caused this damage and that the Landlord incurred this expense.

Expenses not accepted

14. Based on the evidence of the Landlord, I find that the Landlord has not proven on a balance of probabilities that the Tenants or an occupant of the rental unit or a person permitted in the residential complex by the Tenants has wilfully or negligently caused undue damage to the rental unit in the following ways.
15. As discussed above, I find that damages with respect to the basement listed below are too remote to hold the Tenants responsible and that they cannot constitute wilful or negligent damage:
 - January 21, 2023 - That Garbage Guy (\$400.00): Paint basement walls and floor
 - January 26, 2023 That Garbage Guy (\$2,000.00): Clean out unit, pressure wash, clean & disinfect basement, paint walls and floor
 - February 2, 2023: Dulux Paint for basement \$369.66
16. I find that there are also other expenses listed below that would normally be incurred by a Landlord upon the termination of a tenancy:
 - February 22, 2023: Miki Painting and Decorating (\$3,358.08): Patch, prime, and paint unit
 - March 2, 2023: Jaana's Site Services (\$340.00): strip and wax floors
 - May 10, 2023 Robert's Plumbing and Sheet Metal (\$134.50): replace broken thermostat during annual furnace cleaning
 - June 19, 2023 T.W. Zegil's Ltd (\$53.65): replace bathroom baseboards
17. I also find that, on a balance of probabilities, there is insufficient evidence before me to find that the Tenant, another occupant of the rental unit or a person whom the Tenant permitted in the residential complex wilfully or negligently caused the following undue damage to the rental unit or residential complex:
 - March 14, 2023 That Garbage Guy: Kitchen (\$340.00): remove tile and 2 layers of subfloor. The photos in evidence showing the kitchen floor did not clearly show undue damage.
 - March 31, 2023 invoice from T.W. Zegils' Ltd. (\$2,674.90): new kitchen floor and stair treads (damaged beyond repair). The amount allocated to the Tenants was \$1,337.45 but no photographs of the alleged damage to the stairs were entered into evidence upon which I could base this finding and as discussed above there was insufficient evidence to determine undue damage to the kitchen floor.

- May 2, 2023 That Garbage Guy (\$1,050.00): cleaning garbage and debris back and front yard, tree removal - \$625.00 allocated to the Tenants. While I am satisfied that there was damage to the yard, this has also been claimed on the January 21, 2023 invoice. It is not unreasonable that after the snow melted in the spring more need clean up became apparent, but there is insufficient detail and insufficient evidence about the nature of this expense to find that it meets the threshold of undue damage.
- June 19, 2023 invoice from ECCO Supply \$126.29: repair floor. The Landlord's Agent stated that this was for damage to the bathroom floor but no evidence was led as to the nature and extent of the damage.
- June 23, 2023 invoice from Wolseley Canada (\$196.95): toilet. There was insufficient evidence to determine that the toilet was damaged beyond repair and required replacement.

17. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
18. There is no last month's rent deposit.
19. I find based on the evidence before me, on a balance of probabilities, that the Landlord has incurred reasonable costs of \$5,929.98 to repair the damage and/or replace property that was damaged and cannot be repaired.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated as of December 31, 2022.
2. The Tenants shall pay to the Landlord \$5,929.98, which represents the reasonable costs of repairing the damage and/or replacing the damaged property.
3. The Tenants shall also pay to the Landlord \$186.00 for the cost of filing the application.
4. The total amount the Tenants owe the Landlord is \$6,115.98.
5. If the Tenants do not pay the Landlord the full amount owing on or before December 16, 2023, the Tenants will start to owe interest. This will be simple interest calculated from December 17, 2023 at 7.00% annually on the balance outstanding.

December 5, 2023

Date Issued

Margo den Haan

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.