



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

Citation: St. George's Residence v Barr, 2023 ONLTB 77263

Date: 2023-11-29

File Number: LTB-L-034386-23

In the matter of: 310, 505 SIMCOE ST S
OSHAWA ON L1H4J9

Between: St. George's Residence Landlord

And

Elizabeth Barr Tenant

St. George's Residence (the 'Landlord') applied for an order to terminate the tenancy and evict Elizabeth Barr (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant and
- 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.

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

St. George's Residence (the 'Landlord') also applied for an order requiring Elizabeth Barr (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 November 14, 2023.

Only the Landlord's agent R. Thiwann ('R.T') and Landlord's legal representative V. Orlandi and Landlord's Witness T. Mackendrick ('T.M') attended the hearing.

As of 12:17 p.m., 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:

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. On April 14, 2023, the Landlord gave the Tenant an N5 notice of termination deemed served on April 19, 2023. The N5 notice alleges both substantial interference under section 64 of the *Residential Tenancies Act, 2006* (the 'Act') and wilful or negligent damage to the rental unit or residential complex under section 62 of the Act.

Substantial Interference

4. The N5 Notice specifies that on March 11, 2023, a plumber determined that there was a blockage in the rental unit's kitchen sink drain, which resulted from the improper disposal of coffee grounds, and caused blockages in the pipes of two units situated below the rental unit's kitchen.
5. Pursuant to section 64(3) of the Act, the Tenant had seven days from the date of receiving the N5 notice to void the notice. The voiding period ran from April 20 to April 27, 2023. I find that the Tenant stopped the conduct or activity or corrected the omission within seven days after receiving the N5 notice of termination. The Landlord gave no evidence that the Tenant engaged in similar conduct during the voiding period. Therefore, I find that the substantial interference portion of the N5 notice is void.

Wilful or Negligent Damage

6. The N5 Notice states that the behaviour described above caused an estimated \$2,135.70 in damage to the property.
7. During the hearing, R.T testified that on March 11, 2023, at approximately 9:11 a.m., plumbers attended two units directly below the rental unit to repair blocked drainage. The Landlord incurred a cost of \$2,135.20 to repair the damage. . The Landlord's legal representative submitted an invoice for the repair of the blocked kitchen sink drain lines downstream of units 210 and 212, totaling \$2,135.00 including HST, as evidence during the hearing. The invoice states that the damage was caused by units above.
8. Additionally, at the hearing, T.M, a plumber from Marco Plumbing Company, testified that on March 10 and March 11, 2023, they responded to an emergency call to repair kitchen drain blockages in units 210 and 212. T.M stated that Marco Plumbing determined the blockages were due to coffee grounds being disposed of in the kitchen drain of Unit 310, the rental unit. The Landlord's legal representative submitted a report from Marco Plumbing as evidence, which confirms, "It was determined that the cause of the blockage was coffee grounds that had been put down the kitchen drain of Unit 310."

9. Based on the Landlord's uncontested evidence, I find, on a balance of probabilities, that the Tenant caused the blockage in the kitchen sink drain line by disposing of coffee grounds. The Tenant did not repair the damage, pay the Landlord the reasonable costs to repair the damage or make arrangements satisfactory to the Landlord within seven days after receiving the N5 notice of termination. Therefore, the Tenant did not void the N5 notice of termination in accordance with section 62(3) of the *Residential Tenancies Act, 2006* (Act)

Relief from eviction

10. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act , and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
11. At the hearing, R.T testified that after the incident on March 11, 2023, the Landlord provided a screen to the Tenant, which was placed on the rental unit's kitchen sink to prevent a recurrence. R.T stated that the Tenant removed this screen approximately two weeks ago. Additionally, R.T expressed the Landlord's concerns that if the Tenant continues to dispose of coffee grounds into the building pipes, it could lead to severe blockages, potentially resulting in flooding throughout the entire building. There is a fear of catastrophic damage, particularly if the main drain of the building becomes blocked. R.T further testified that a similar incident occurred in August 2022 when the kitchen sink drain in the rental unit became blocked for the same reason which incurred repair costs covered by the Landlord.
12. The Landlord seeks standard order with 11-days termination. The Landlord is not aware of circumstances of the Tenant what would cause the Board delay or deny the eviction.
13. The Tenant was not at the hearing to request relief from eviction or submissions with respect to whether it would be appropriate to grant any form of relief from eviction under subsection 83(1) of the Act.

Compensation

14. I am satisfied that the Landlord has incurred or will incur reasonable costs of \$2,135.70 to repair the damage. The Tenant shall be ordered to pay these costs.
15. The Tenant was required to pay the Landlord \$7,039.96 in daily compensation for use and occupation of the rental unit for the period from May 11, 2023 to November 14, 2023.
16. Based on the Monthly rent, the daily compensation is \$37.45. This amount is calculated as follows: \$1,139.00 x 12, divided by 365 days.
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.

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 December 10, 2023.
2. If the unit is not vacated on or before December 10, 2023, then starting December 11, 2023, 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 December 11, 2023.
4. The Tenant shall pay to the Landlord \$7,039.96, which represents compensation for the use of the unit from May 11, 2023, to November 14, 2023.
5. The Tenant shall also pay the Landlord compensation of \$37.45 per day for the use of the unit starting November 15, 2023 until the date the Tenant moves out of the unit.
6. The Tenant shall pay to the Landlord \$2,135.70, which represents the reasonable costs of repairing the damage.
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 \$9,361.66.
9. If the Tenant does not pay the Landlord the full amount owing on or before December 10, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 11, 2023 at 7.00% annually on the balance outstanding.

November 29, 2023

Date Issued

Joy Xiao
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 June 11, 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.