



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

Citation: Loker v Nayef, 2023 ONLTB 74569

Date: 2023-11-15

File Number: LTB-L-039095-22

In the matter of: GROUND FLOOR
72 ASHGLEN WAY
UNIONVILLE ON L3R3A7

Between: Yen Loker Landlord

And

Ghalia Nayef Tenant

Yen Loker (the 'Landlord') applied for an order to terminate the tenancy and evict Ghalia Nayef (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes. This is the L1 Application.

The Landlord also applied for an order to 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 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. This is the L2 Application.

The Landlord also applied for an order requiring 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 is the L2 application. This application was heard by videoconference on July 10, 2023.

The Landlord, the Landlord's Legal Representative, Elina Vasilieva, and the Tenant attended the hearing. The Tenant spoke to Tenant Duty Counsel prior to the hearing.

Determinations:

L1 Application

1. 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.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The Tenant vacated the rental unit on September 2, 2022. Rent arrears are calculated up to the date the Tenant vacated the unit.
4. The lawful rent is \$895.00. It was due on the 1st day of each month.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to September 2, 2022 are \$3,638.84.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$500.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.
9. Interest on the rent deposit, in the amount of \$3.85 is owing to the Tenant for the period from January 12, 2022 to September 2, 2022.

L2 Application

10. The Landlord is no longer seeking an eviction order as the Tenant had vacated the rental unit on September 2, 2022.
11. In the L2 application, the Landlord is seeking compensation in the amount of \$2,138.00 for damages to the walls and carpet in the rental unit allegedly caused by the Tenant.
12. The Landlord's Legal Representative submitted a book of documents as evidence. This 59 page book of documents included several photographs of unsorted garbage outside the rental unit, photographs of the fireplace inside the rental unit, text messages between the Landlord and the Tenant, and a quote from Dila Flooring Ltd. for the replacement of carpet in the basement and hallway.
13. In their testimony, the Landlord conceded that evidence by way of photographs of the damage to the walls and carpet were not included in their book of documents.
14. As the applicant, the Landlord has the burden of proving their claim regarding alleged damages. To be successful, section 89 of the *Residential Tenancies Act, 2006* (the 'Act')

requires that the Landlord must establish that the Tenant wilfully or negligently caused undue damage.

15. Other than a quote from the flooring company, the Landlord provided no additional evidence to support their allegation that the Tenant wilfully or negligently caused undue damage to the walls and carpet.
16. There was insufficient evidence to determine the Tenant wilfully or negligently caused undue damage to the rental unit or residential complex. As a result the Landlord's L2 application is dismissed.

It is ordered that:

L1 Application:

1. The tenancy between the Landlord and the Tenant is terminated as of September 2, 2022, the date the Tenant moved out of the rental unit
2. The Tenant shall pay to the Landlord \$3,320.99. This amount includes rent arrears owing up to the date the Tenant moved out of the rental unit and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
3. If the Tenant does not pay the Landlord the full amount owing on or before November 26, 2023, the Tenant will start to owe interest. This will be simple interest calculated from November 27, 2023 at 7.00% annually on the balance outstanding.

L2 Application:

4. The Landlord's application is dismissed.

November 15, 2023

Date Issued

Susan Priest

Member, Landlord and Tenant Board

15 Grosvenor St, 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.

**Schedule 1
SUMMARY OF CALCULATIONS**

A. Amount the Tenant must pay as the tenancy is terminated

Rent Owing To Move Out Date	\$3,638.84
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$500.00
Less the amount of the interest on the last month's rent deposit	- \$3.85
Total amount owing to the Landlord	\$3,320.99