



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

Citation: Raposo v Bautista, 2023 ONLTB 72344

Date: 2023-11-02

File Number: LTB-L-060248-23

In the matter of: 7 APPALACHIAN TRAIL
WASAGA BEACH ON L9Z0G3

Between: Antonio Jose Raposo Landlord

And

Justin Bautista Tenant

Antonio Jose Raposo (the 'Landlord') applied for an order to terminate the tenancy and evict Justin Bautista (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully caused undue damage to the premises; and
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex 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 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 application was heard by videoconference on October 25, 2023.

The Landlord, and the Landlord's Legal Representative, Warren Rigby, attended the hearing.

As of 10:20 a.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. Therefore, the tenancy is terminated on November 7, 2023.
2. On August 1, 2023, the Landlord gave the Tenant an N7 notice of termination ('N7 Notice') for causing wilful damage to the rental unit or residential complex and for using the rental unit or the residential complex in a manner that is inconsistent with use as a residential premises and for compensation for the cost to repair or replace the damaged property.
3. The N7 Notice is summarized as follows:

On July 23, 2023 and July 31, 2023, the Landlord conducting two inspections of the rental unit and outside property. It was during these inspections the Landlord found dog feces on the back deck and throughout the rental unit, catastrophic damage to the interior and exterior walls, carpets, doors, baseboards, floors, and furniture.

4. In his uncontested testimony, the Landlord stated the claims in the N7 Notice are true and accurate. He stated the damage in the unit was so extensive that the estimated costs to repair or replace the property will amount to over \$25,000.00.
5. The Landlord testified he has known the Tenant for six or seven years and the Tenant's occupancy of the rental unit commenced in March 2022 with him living solely in the basement with his spouse and child. The Landlord occupied the upper level of the home. He stated the Tenant's relationship with his spouse broke down and due to the behaviour of the Tenant, he was forced to move out of the property in August 2022. He added that the Tenant's behaviour caused him concern for his safety thus he did not visit the property very often nor have any contact with the Tenant.
6. The Landlord's Legal Representative submitted a series of photographs as evidence. These photographs showed the damage caused by the Tenant to the doors, floors, walls, and furniture. Dog feces was throughout the rental unit, bird feces was on the floor in the basement and the Landlord stated when he entered the basement he discovered an exotic bird deceased in its cage. The bathroom door was severely damaged and it could be recognized that the Tenant's dog was locked in the bathroom for extended periods of time. The evidence also showed a two photographs of individuals attached to a piece of cardboard. These photographs contained tears resembling bullet holes. The Landlord testified the Tenant is in possession of a BB gun and would regularly perform target practice in the garage however these photographs were found in the basement. It was indicative to me that the damage shown in these photographs was beyond normal wear and tear and was wilfully caused by the Tenant.

7. The Landlord's Legal Representative also submitted an estimate from a contractor and a flooring company as evidence. The contractor's estimate shows a total of \$21,752.50 to repair the damage in the rental unit and the flooring estimate reflects the amount of \$5,085.00 to replace the flooring.
8. The Landlord testified after the application was filed, the Landlord was notified by a neighbour that a flood had occurred in the rental unit. He stated that upon his arrival at the rental unit he found the basement had been flooded and it was obvious the water damage had occurred at least two weeks prior to him being notified. This damage included saturated carpets, and mould throughout the basement walls and baseboards. The Landlord concluded the flood was not caused by the Tenant however the Tenant's neglect to advise the Landlord of the issue knowing the damage would be significant was wilful.

Wilful Damage

9. Subsection 34(1) of the *Residential Tenancies Act, 2006*, (the 'Act') states that a tenant is responsible for repair for undue damage that is caused wilfully or negligently.
10. Subsection 62(1) of the Act sets out that a landlord may give a tenant notice of termination of the tenancy if the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex wilfully or negligently causes undue damage to the rental unit or the residential complex.
11. Subsection 63(1) of the Act states:

63(1) Despite section 62, a landlord may give a tenant notice of termination of the tenancy that provides a termination date not earlier than the 10th day after the notice is given if the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex,

(a) wilfully causes undue damage to the rental unit or the residential complex; or

(b) uses the rental unit or the residential complex in a manner that is inconsistent with use as residential premises and that causes or can reasonably be expected to cause damage that is significantly greater than the damage that is required in order to give a notice of termination under clause (a) or subsection 62 (1).

12. Further, section 89 of the Act also states the following regarding damage:

A landlord may apply to the Board for an order requiring a tenant to pay reasonable costs that the landlord has incurred or will incur for the repair of or, where repairing is not reasonable, the replacement of damaged property, if the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex wilfully or

negligently causes undue damage to the rental unit or the residential complex and the tenant is in possession of the rental unit.

13. On an L2 Application, based on an N7 notice of termination, the Landlord bears the burden of proof, on a balance of probabilities, to prove that the Tenant wilfully caused damage to the rental unit or residential complex.
14. It was uncontested that the Tenant wilfully caused damage to the rental unit. The evidence tendered at the hearing, supports that the Tenant wilfully damaged the door by continually locking his dog in the bathroom which is evident by the photograph. Further, the Tenant ought to have known a flood occurred in the basement as he was living in the rental but chose not to notify the Landlord with the knowledge substantial damage would result. In my view, this is wilful damage.
15. The Landlord is seeking termination of the tenancy and compensation for the out-of-pocket expenses he will incur or has incurred to repair the damages.
16. On the uncontested evidence before me, I am satisfied on a balance of probabilities, that the Tenant wilfully caused undue damage to the rental unit or residential complex. The Landlord's claim to terminate the tenancy is granted. I am also satisfied that the Landlord has incurred or will incur substantial costs to repair the damages caused by the Tenant, as a result, I find the costs tendered as evidence to be reasonable in the circumstances and the claim for compensation is granted.
17. 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. The Tenant was not present to provide any evidence regarding their circumstances.
18. Based on the findings above, the tenancy between the Landlord and the Tenant must be terminated.
19. The Landlord also incurred costs of \$186.00 for the filing of the application and is entitled to reimbursement of those costs.

Expedited eviction

20. The Landlord sought an earlier termination of the tenancy and an expedited eviction. He testified the damage in the rental unit is so extensive and as he has not been able to enter the premises in fear of his safety, there is a genuine concern that the damage will worsen.
21. Section 84 of the Act states that subject to clause 83 (1) (b), the Board shall, in an order made under section 69 based on a notice given under subsection 61 (1) that involves an illegal act, trade, business or occupation described in clause 61 (2) (a) or based on a notice given under section 63, 65 or 66, request that the sheriff expedite the enforcement of the order.

22. The Tenant has shown a blatant disregard for the Landlord's property and based on the uncontested evidence and testimony before me, I am satisfied that an expedited eviction is warranted. The Sheriff shall be asked to expedite the eviction pursuant to s. 84 of the Act.

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 November 7, 2023.
2. If the unit is not vacated on or before November 7, 2023, then starting November 8, 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 November 8, 2023. ; **The Sheriff is requested to expedite the enforcement of this order.**
4. The Tenant shall pay to the Landlord \$26,837.50, which represents the reasonable costs of repairing the damage and/or replacing the damaged property.
5. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
6. The total amount the Tenant owes the Landlord is \$27,023.50.
7. If the Tenant does not pay the Landlord the full amount owing on or before November 7, 2023, the Tenant will start to owe interest. This will be simple interest calculated from November 8, 2023 at 7.00% annually on the balance outstanding.

November 2, 2023

Date Issued

Susan Priest

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 May 8, 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.