



**Order under Section 87, 88.1, & 89  
Residential Tenancies Act, 2006**

**Citation:** Wood v Suchomel, 2023 ONLTB 71407

**Date:** 2023-10-30

**File Number:** LTB-L-060881-22

**In the matter of:** 1428 McAuliffe Lane  
Peterborough, ON K9M 0B6

**Between:** Aprile Wood Landlord

**And**

Andrew Suchomel Former  
Tenant

Aprile Wood (the 'Landlord') applied for an order requiring Andrew Suchomel (the 'Former Tenant') to pay rent and daily compensation that the Former Tenant owes.

Further, the Landlord applied for an order requiring the Former Tenant to pay the Landlord's reasonable out-of-pocket costs that the Landlord incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Former Tenant, another occupant of the rental unit or someone the Former Tenant permitted in the residential complex.

Further, the Landlord applied for an order requiring the Former Tenant to pay the Landlord's reasonable out-of-pocket costs that the Landlord incurred as a result of the Former Tenant or someone else visiting or living in the rental substantially interfering with the Landlord's reasonable enjoyment or lawful right, privilege or interest.

This application was heard by videoconference on September 7, 2023.

The Landlord and the Former Tenant attended the hearing. The Former Tenant met with Tenant Duty Counsel prior to the meeting.

**Determinations:**

1. As explained below, the Landlord proved the allegations contained in the application on a balance of probabilities. Therefore, the Former Tenant shall be ordered to pay to the Landlord **\$1,577.91.**

2. I am satisfied that the Landlord served the Former Tenant with the application at least 30 days before the hearing in accordance with Rule 3.3 of the LTB's Rules of Procedure.
3. The Former Tenant vacated the rental unit on April 24, 2022.

#### *Rent Arrears*

4. On August 28, 2023, the Former Tenant had filed with the Board a list of issues he intended to raise in accordance with s. 87(2) of the *Residential Tenancies Act, 2006* (the 'Act').
5. All parties agreed that the Former Tenant had vacated the unit on April 24, 2022. A claim brought in accordance with s. 87(2) is treated in the same fashion as a Tenant application under s. 30 or 31 of the Act and as such, s. 29(2) outlines that no application may be brought more than one year after the day the alleged conduct giving rise to the application occurred.
6. As such, because the Tenant raised his issues more than one year from the date he vacated the unit, I was unable to hear evidence with respect to these issues. Further, the Former Tenant had never served his evidence upon the Landlord prior to the hearing in accordance with the Board's *Rules of Procedure* and as such, I had only considered the Landlord's evidence concerning the application proper.
7. The unit in question was a room in a house that the Former Tenant had rented from the Landlord. The rent charged was \$650.00 per month. The Former Tenant paid a last month's rent deposit for that amount on May 26, 2021.
8. The Landlord's application seeks rent for the months of May, June and July of 2022 for a total amount of \$1,950.00. The lease term started on September 1, 2021, and was to be completed as of August 31, 2022. A copy of the lease was entered into evidence. The Landlord testified that the Former Tenant had texted her a couple days prior to April 24, 2022 to advise her that he was vacating the unit and requested the Landlord to apply his last month's rent deposit to the month of April 2022. The Landlord testified that she never agreed with the Tenant to terminate the tenancy.
9. The Landlord testified that she did not rent out the unit again until September 1, 2022, which is consistent with the evidence provided that the Landlord was renting out her rooms to students.
10. The Former Tenant testified that he should not be responsible for the rent for the months of May, June or July as the Landlord was aware of the fact that the Former Tenant had vacated the unit in April. The Former Tenant also argued that the Landlord failed to mitigate her losses as required under s. 16 of the Act by not re-renting the unit until September 1, 2022, over 4 months after he had already vacated.

11. Section 88 of the Act outlines that if a tenant vacates a rental unit without giving notice of termination in accordance with the Act and no agreement to terminate has been made, that a determination with respect to the amount of arrears of rent owing by the tenant are made in accordance with the following rules:
12. Subsection 1 of that section outlines that if a tenant vacated the rental unit after giving notice that was not in accordance with the Act, arrears of rent are owing for the period that ends on the earliest termination date that could have been specified in a notice, had the notice been given in accordance with the Act.
13. In this case, only a termination of the tenancy in accordance with s. 47 of the Act would apply, which states that a tenant may terminate a tenancy at the end of the term of tenancy for a fixed term, which in this case was until August 31, 2022. Section 44 of the Act states that a notice to terminate a tenancy under s. 47 shall be given at least 60 days before the expiration date of the specified term.
14. As such, in order for the Former Tenant's notice to have been valid, it would have to have been provided to the Landlord on February 24, 2022, which it was not in this case.
15. Having considered the evidence of both parties, I am satisfied on a balance of probabilities that the Landlord has proven that the Former Tenant owes the Landlord the rent for the months of May, June and July 2022. Had the Former Tenant given the Landlord notice of his intention to vacate on April 24, 2022, the Tenant would have been required to give notice to at least to June 30, 2022 to vacate in accordance with s. 44.
16. That said, the Former Tenant could not provide notice to the end of that period, as the fixed term had yet to be completed. As such, the Landlord is entitled to the entirety of the rent until the end of the agreed upon term.
17. That said, the Landlord did not rent out the unit until September 1, 2022. Section 16 of the Act states that an individual has a duty to take reasonable steps to minimize their losses. In this case, the Landlord never provided evidence that the unit was advertised for rent once the Former Tenant was found to have vacated the unit.
18. In making my determination, I am considering the fact that the Landlord was advertising and renting rooms in the residential complex for students whereby tenants would, more likely than not, be living in the unit for the duration of the school year from September until the end of April. As such, I find that the Landlord's obligation to minimize her losses began as of July 31, 2022, 30 days after the day in which the Former Tenant would have vacated had he provided notice in accordance with the Act.
19. Having considered the evidence of all parties, I am satisfied on a balance of probabilities that the Former Tenant owes the Landlord a total of **\$1,950.00** for rent arrears for the months of May, June and July 2022.

*Rent Deposit*

20. The Landlord collected a rent deposit of \$650.00 from the Former Tenant and this deposit is still being held by the Landlord. The rent deposit is applied to the last rental period of the tenancy.
21. Interest on the rent deposit, in the amount of \$18.93 is owing to the Former Tenant for the period from May 26, 2021 to September 7, 2023.

*Damage*

22. The Landlord also seeks \$214.50 for reasonable costs that she incurred for the repair and replacement of her driveway she alleges the Former Tenant willfully or negligently caused, as well as \$35.00 for a missing mattress cover and \$10.00 for a missing key in accordance with s. 89 of the Act.
23. The Landlord testified that the Former Tenant's car had leaked oil onto the driveway. After the Tenant was advised of this issue, the Former Tenant had his vehicle repaired to prevent the issue from continuing.
24. Entered into evidence was a hand-written note from Tyler Spratt, which states that he sealed the driveway of the residential complex for the Landlord on May 29, 2022 for \$169.50. A photo of the completed work was entered into evidence.
25. On a balance of probabilities, I am not satisfied that the Former Tenant is responsible for the damage to the driveway. The section outlines that the damage must have been caused willfully or negligently. There was no evidence to support that the damage was caused willfully, and the Former Tenant had actually repaired his vehicle as soon as he had been made aware of the issue.
26. As such, I am not satisfied that the damage was caused by any negligent actions of the Former Tenant and this portion of the Landlord's claim is dismissed.
27. That said, the Former Tenant did agree that he owes the Landlord \$35.00 for the mattress cover and \$10.00 for the key and as such, those items will be ordered by the Former Tenant to reimburse the Landlord.
12. As such, based on the evidence of both parties I am satisfied that the Former Tenant willfully or negligently caused the damage as outlined and will be ordered to pay the Landlord **\$45.00** for the damage.

*Substantial Interference*

13. The Landlord also sought \$50.84 in reasonable out-of-pocket expenses that the Landlord incurred as a result of conduct that substantially interfered with the Landlord's reasonable enjoyment of the residential complex, or another right, privilege or interest of the Landlord.

14. The Landlord testified that the Former Tenant would negate to lock the front door of the residential complex when he would leave. The Landlord would notice this issue herself as well as other tenants would complain to her about the Former Tenant not locking the front door before he would leave the residential complex.
15. As a result of this issue, on April 4, 2022, the Landlord installed cameras in the residential complex facing the front door. Video of the Former Tenant leaving the residential complex without locking the door was entered into evidence.
16. The Former Tenant testified that he was never made aware of the camera and felt it was a violation of his privacy. He further testified that this only occurred on one occasion. On this point, I disagree. The Landlord had a real concern regarding the locking of the front door, having received complaints from other tenants with respect to more than one incident and having put up a sign at the door reminding tenants to lock the door.
17. One particular text message exchange between the Landlord and the Former Tenant I found to be concerning where the Landlord had advised the Former Tenant about locking the front door to which the Former Tenant replied; "Okay. You certainly have a flair for the dramatic".
18. On the basis of the evidence of both parties, I find that the Landlord had a bona fide concern regarding the locking of the front door and that her concerns were effectively dismissed by the Former Tenant as being "dramatic". I find the Landlord had a real safety concern regarding the locking of the front door and that the Former Tenant's actions had substantially interfered with the Landlord's reasonable enjoyment of the residential complex.
19. The Former Tenant's actions required the Landlord to incur reasonable out-of-pocket expenses for the camera in the amount of \$50.84.
20. Having considered the evidence of both parties, I am satisfied that the Former Tenant substantially interfered with the Landlord's reasonable enjoyment of the residential complex by failing to ensure the front door was locked. As such, the Former Tenant will be ordered to pay to the Landlord **\$50.84.**

**It is ordered that:**

1. The Former Tenant shall pay to the Landlord **\$1,950.00**, which represents rent and compensation owing up to July 31, 2022.
2. The Former Tenant shall also pay to the Landlord **\$45.00**, which represents damage costs the Landlord incurred.
3. The Former Tenants shall also pay to the Landlord **\$50.84**, which represented the Landlord's out-of-pocket expenses as a result of the Former Tenants' substantially interfering with the Landlord.
4. The Former Tenant shall pay to the Landlord **\$201.00** for the cost of filing the application.

5. The Landlord owes \$668.93 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Former Tenant.
6. The total amount the Former Tenant owes the Landlord is **\$1,577.91.**
7. If the Former Tenant does not pay the Landlord the full amount owing on or before November 10, 2023, the Former Tenants will start to owe interest. This will be simple interest calculated from November 11, 2023 at 7.00% annually on the balance outstanding.

**October 30, 2023**

**Date Issued**

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**Jagger Benham**

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.