



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

**Citation:** 2766526 ONTARIO LTD. v McInnes, 2023 ONLTB 71800

**Date:** 2023-10-27

**File Number:** LTB-L-038999-22

**In the matter of:** 1, 266 BRIDGE ST  
CARLETON PLACE ON K7C3H6

**Between:** 2766526 ONTARIO LTD. Landlord

**And**

Caitlyn McInnes Tenant

2766526 ONTARIO LTD. (the 'Landlord') applied for an order to terminate the tenancy and evict Caitlyn McInnes (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. The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date. 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 July 12, 2023. The Landlord's agent M. Bulatovic and the Landlord's legal representative L. Barder. 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 November 7, 2023. The Tenant shall pay the Landlord for damages, and costs in the amount of \$8930.18 and ongoing daily compensation until the Tenant moves out of the unit.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N5 Notice of Termination- Substantial interference and Damages

3. On June 15, 2022, the Landlord gave the Tenant an N5 notice of termination by leaving it in the mailbox at the unit. The notice of termination contains the following allegations:

- Improper disposal of garbage and household items
  - Extreme sanitation and hygiene issues in the unit including animal feces smeared on floors and walls
  - Improper disposal and littering neighbour's property with cigarette butts
  - Significant damage to drywall, doors, cabinets and cupboard doors removed from cabinets
4. The Tenant did not stop the conduct or correct the omission within seven days after receiving the N5 notice of termination. No repairs were conducted, the unit's condition remained in a state of severe unkemptness and garbage and household items were not disposed of. Therefore, the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).

#### Landlord's evidence

5. The Landlord's agent MB is the owner of the Corporation. MB testified about the Landlord's almost year-long effort to work with the Tenant and obtain the Tenant's cooperation in keeping the unit in a state of ordinary cleanliness and to properly dispose of garbage and household items from her unit. MB testified that despite purchasing extra garbage stickers, extra cans with safety lids and making weekly calls to remind the Tenant to take out the garbage to the curb for pickup, the situation worsened over time. MB testified that she received frequent complaints from another tenant as well as a neighbouring property about the Tenant's mounting garbage and household items piled up outside the unit. The neighbouring property complained that the Tenant was seen regularly tossing cigarette butts onto their property. Another tenant from complex wrote an email to the Landlord expressing frustration for picking up garbage that had been tossed over the Tenant's balcony, blown away and/or torn apart by wildlife and vermin and strewn about the property onto the ground level. The complaining tenant advised the Landlord that they refuse to continue to pick up after the Tenant. MB testified that she had many conversations with the Tenant about use of the bins purchased for the Tenant's use while waiting for garbage day, however the bins always remained empty and unused and the Tenant continued to pile garbage outside her door on her balcony, sometimes tossing it down the stairs to the ground level. MB testified that she asked the Tenant if there was anything more that the Landlord could do to help the Tenant, which the Tenant declined to respond to. As time passed, the garbage outside of the Tenant's door would be ransacked by wildlife and vermin and eventually be strewn around the property grounds. MB testified that an old stove, boxes, storage bins, coat rack and high chair were all left on the balcony outside of the Tenants unit and that garbage was piled up such that it impeded access to the unit door. MB entered multiple photos into evidence in support of the claims regarding the garbage and household items. MB testified that they would often have to remove the garbage after it sat for some time.
6. MB testified that during an inspection June 1, 2022, the interior of the unit was found to be in a deplorable condition. There were many large holes in walls, broken or missing doors, and the unit was extremely unkempt with garbage and feces littering the unit. MB testified that even with a mask, the odor in the unit was unbearable. MB testified that the animal feces was smeared into the floors and on walls. Dirty diapers were apparent in the photos entered into evidence. MB testified that the Tenant has ruined multiple appliances over the

tenancy. The electricity was disconnected as of the hearing date and the Tenant's child had been placed in the custody of Children's Aid. Just prior to the hearing, the Landlord did another inspection of the unit on July 10, 2023 which continues to deteriorate.

7. The Landlord obtained a quote for renovations to the unit by Haus Pro Home Improvement Centre, dated March 23, 2023. The quote is for extensive repairs and renovations totaling \$34,014.36 inclusive of HST. Within the quote are other upgrades to the electrical panel, plumbing and electrical work, which are not part of this application.
8. The Landlord seeks for an adjusted amount of damages with consideration to the betterment of the Landlord. The Landlord seeks for the Tenant to be ordered to pay for the following:
  - Flooring quoted at \$12,639.20 adjusted to **\$6,000.00**
  - Wall damage/drywall repair/replacement/painting quoted at \$7,340.00 adjusted to **\$3,000.00**
  - Carpentry and general labour **\$800.00**
  - Replacement of two doors **\$200.00**
9. The total amount in damages sought by the Landlord is \$10,000.00.
10. Based on the uncontested evidence before me, I find that the Tenant has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant because the ongoing issue of garbage, refuse and household items piled up in and surrounding the unit, as well as impeding access to the unit. This causes the Landlord cost and inconvenience to dispose of the Tenant's garbage and items on multiple occasions. The unkempt condition of the unit will be a considerable task to remediate. Its current condition is a breeding ground for multiple infestations which can cause further damage and significant cost to eradicate.
11. Based on the uncontested evidence before me, I also 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 undue damage to the rental unit. The damage to the unit is far beyond that of normal wear and tear. There are many large holes in walls throughout the unit, to the point that entire walls will need to be replaced. The floors are severely damaged from dirt, excrement and a total lack of basic hygiene. I am satisfied that the flooring will need to be completely replaced as quoted and in many parts of the unit. I find the request for flooring, door and drywall replacement, repair and painting including labour a reasonable assessment based on the level of damage in the unit which was well documented by the Landlord.

#### Compensation for damages

12. I find that the Landlord's adjusted amount of damages sought are reasonable based on the level of damage done to the unit. In fact, it is my view that the Landlord will incur far greater cost than what is claimed to make the unit habitable again. Accordingly, the Landlord's request for damages in the amount of \$10,000.00 shall be granted.

## Daily compensation and rent deposit

13. As of the hearing date, the Tenant had paid daily compensation in full and therefore no money is owing for compensation up to the hearing date.
14. Based on the Monthly rent, the daily compensation is \$40.92. This amount is calculated as follows: \$1,244.76 x 12, divided by 365 days.
15. The Landlord collected a rent deposit of \$1,200.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$55.82 is owing to the Tenant for the period from February 24, 2021 to July 12, 2023 .
16. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

## Relief from eviction

17. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. As noted, the Tenant did not attend the hearing of this matter and thus I did not have the opportunity to hear their evidence regarding their circumstances or any dispute of the Landlord's application for an eviction order.

**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. The Tenant shall pay to the Landlord \$10,000.00, which represents the reasonable costs of repairing the damage and/or replacing the damaged property.
3. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
4. The Landlord owes \$1,255.82 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Tenant.
5. The total amount the Tenant owes the Landlord is \$8,930.18.
6. The Tenant shall also pay the Landlord compensation of \$40.92 per day for the use of the unit starting July 13, 2023 until the date the Tenant moves out of the unit. Any amounts paid by the Tenant after July 13, 2023 shall be deducted from the amount owing to the Landlord.
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.
8. 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.
9. 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.

**October 27, 2023**

**Date Issued**

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Donna Adams

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.