



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

**Citation:** Saliba v Mare, 2023 ONLTB 60884

**Date:** 2023-09-12

**File Number:** LTB-L-002953-21

**In the matter of:** 2, 61 JASPER AVE YORK  
ON M6N2N1

**Between:** Anthony Saliba Landlord

**And**

Marianio Mare Tenants  
Sonia Fatima

Anthony Saliba (the 'Landlord') applied for an order to terminate the tenancy and evict Marianio Mare and Sonia Fatima (the 'Tenants') 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 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.

Anthony Saliba and Anthony Saliba (the 'Landlord') also applied for an order requiring Marianio Mare and Sonia Fatima (the 'Tenants') 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 Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex.

This application was originally heard on August 11, 2022, and rescheduled de novo.

This application was then heard by videoconference on August 30, 2023.

Only the Landlord attended the hearing.

As of 11:27 am, the Tenants were 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, and the Tenants are responsible to pay the Landlords for damages in the amount of \$8600.00.
2. The Tenants were in possession of the rental unit on the date the application was filed.
3. The Landlord is holding a Last Month Rent Deposit in the amount of \$1875.00.
4. The rental unit is in a four plex.
5. On December 9, 2021, the Landlord gave the Tenants an N5 notice of termination by handing it in person to the Tenants. The termination date in the notice was December 31, 2021. I am satisfied that the N5 notice was properly served and complied with section 62 and 64 of the *Residential Tenancies Act, 2006* ('Act').
6. The N5 notices alleges damages to the rental unit and residential complex. The damages include damages to a chain link fence, window screens, drywall in laundry room, carpet, wood railing, door lock, bathtub, flooring, kitchen faucet and broken window. The N5 also requires the Tenants to repair the damage or pay the Landlord \$8750. 00..
7. The N5 notice gave the Tenants an opportunity to void the notice within 7 days by stopping the activity and repairing or replacing the damaged property or paying the Landlord the amount of \$8750.00 to repair the damaged property. The N5 notice provided the Tenants with sufficient details on the damages to the rental unit that needed to be repaired or replaced.
8. On December 23, 2021, the Landlord gave the Tenants an N5 notice of termination by handing it in person to the Tenants. The termination date in the notice was January 6, 2022. I am satisfied that the N5 notice was properly served and complied with section 62 and 64 of the *Residential Tenancies Act, 2006* ('Act').
9. The second N5 notice provided the Tenants with sufficient details on the damages to the rental unit which included a chain link fence, window screen net in common area stairwell, wooden fence, drywall repair in common area laundry room, carpet repair and window frame repair due to burns, oak wood railing, front door trim, front door lock, bathtub, wood floors, kitchen faucet, window screen, window frame and fire alarm.

**Landlord's Uncontested Evidence**

10. The Landlord testified the Tenants moved into the rental unit on October 1, 2020, and shortly after that he started to notice damage to the residential complex and rental unit.

11. The Landlord testified that he lives close to the residential complex and visits the complex almost daily as he has a shed located on the property that he stores personal belongings.
12. He states that he approached the Tenants shortly after they moved in and asked them to refrain from damaging the rental unit and residential complex.
13. The Landlord testified that on Sunday May 31, 2021, the Tenants damaged the chain link fence located on the residential complex. The damage to the chain link fence was that the Tenants were taking apart a portion of the fence leaving holes in the fence. The Landlord had been to the property on several occasions prior to this incident and had repaired the fence. The Landlord is concerned for the safety of other tenants as this fence is located between two properties and there is approximately an eight foot drop behind the fence and he is concerned that someone could fall and injure themselves. The Landlord spoke to the Tenants regarding the damage and the Tenants indicated that the damage was caused by a friend of his child while visiting the rental unit.
14. The Landlord testified that on June 1, 2021, the Tenants cut out the screen in the window that is located on the second floor in the common area. The Tenants were seen hanging out the window so that they could talk to their friends outside. The Landlord states that this has happened on several occasions prior to this date, and he has repaired the screen approximately 5 times. He feels that this is a safety issue as the screen is required to be in the window and hanging out the window is a safety concern as the window is located on the second floor. The Landlord spoke to the Tenants about this damage and the Tenants reply was "Don't Worry".
15. The Landlord testified that on September 12, 2021, at approximately 9:00 pm he received a call from a neighbour of the residential complex, and he informed the Landlord that the wooden fence had fallen over and that he witnessed kids jumping on and over the fence. The fence is approximately 60 feet in length. The Landlord attended the residential complex immediately and called the Police. The Police attended and spoke to the Tenants regarding the incident. The Landlord provided photographs of the damaged wooden fence that was broken in half.
16. The Landlord testified that on October 25, 2021, he had a scheduled inspection of the rental unit and while inside he discovered damage to the drywall in the common area laundry room. He approached the Tenants to discuss the damage and asked the Tenants if they knew anything about the damage. The Tenants stated that the damage was caused by a friend of his son's.
17. The Landlord testified that on October 26, 2021, while inside the residential complex the Landlord discovered that the fire alarm from the stairwell on the second floor had been removed and the Landlord discovered burnt paper on the landing and the carpet was melted and there was a burn mark on the window frame. The Landlord states he asked the Tenants why the fire alarm was removed, and the Tenants stated that it was done by

his son's friend. The Landlord provided photographs of the burnt carpet and window frame.

18. The Landlord testified that on December 1, 2021, it was discovered by the Landlord that the oak railing leading to the Tenant's rental unit had been damaged in several areas. It appeared that a knife or saw was taken to the railing which resulted in pieces missing from the railing and pickets. The Landlord approached the Tenants, and they indicated that the damage was caused by a relative that was visiting the rental unit. Also, on this date it was discovered that wood had been cut off the door frame and removed to the Tenant's rental unit as well as the hallway window frame. The Landlord testified that when he approached the Tenants about the damage to the door frame the Tenants stated they used force on the door with their shoulder as they were locked out. The Landlord provided photos of the damaged railing showing large chunks of wood missing.
19. The Landlord testified that on December 1, 2021, he received a call from the Tenant, Marianio Mare, advising the Landlord that the front door locking system to the residential complex was broken. He immediately went to repair the locking system. This was the second time in two weeks that he had to repair the locking system. The Landlord states that he believes the locking system is being broken by the Tenant's forcing it open.
20. The Landlord testified that on December 1, 2021, while inside the rental unit doing a fire alarm inspection, it was discovered that the bathtub was scratched. The Landlord states that when the Tenants moved into the rental unit on October 1, 2020, the bathtub had been professionally painted. When the Landlord approached the Tenants regarding the condition of the bathtub, they stated that they bathe their dogs in the tub and that is what causes the scratches. The Landlord also states that the wood flooring throughout the rental unit was damaged and was down to the bare wood. When the Tenants moved into the rental unit on October 1, 2020, the flooring had just been stained and a coat of urethane applied. He believes this damage has likely been caused by the dogs running around the rental unit. It was also discovered that the kitchen faucet was broken and the window in the living room was broken as well as the window frame and the screen for the window was missing.
21. On this date the fire alarm was also missing inside the rental unit, the Landlord replaced the fire alarm on this date.

#### Analysis

22. The N5 notice of termination was served pursuant to section 62 and section 64 of the Act which states, in part:

62 (1) 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.

64 (1) A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.

23. I am persuaded by the Landlord's uncontested testimony and evidence that the Tenants wilfully or negligently caused undue damage to the rental unit and residential complex.
24. While the Landlords testimony is that the Tenants have blamed some of the damage on visitors to the rental unit, I note the Tenants are responsible for the behaviour of their visitors while at the rental unit and any damage that they may cause.
25. I am also persuaded by the Landlord's uncontested testimony and evidence that the Tenants have substantially interfered with other tenants and the Landlord's reasonable enjoyment of the residential complex. The Tenants continue to damage the residential complex, and this interferes with other tenants' reasonable enjoyment of the residential complex and jeopardizes the health and safety of other tenants. Having a broken chain link fence that has an eight foot drop behind it could result in an injury to another person. It is difficult for other tenants to reasonably enjoy the residential complex when they are continually faced with damaged property on the residential complex. The Tenants actions of continually damaging the residential complex put the Landlord in a very negative position as he is constantly dealing with complaints from the neighbours as well as other tenants in the building.
26. The Tenants did not correct the omission within seven days of receiving the N5 notice of termination by repairing or replacing the damaged property or paying the Landlord \$8,750.00, the amount estimated to repair or replace the damaged property. Therefore, the Tenants did not void the N5 notice of termination in accordance with section 62(3) and section 64(3) of the Residential Tenancies Act, 2006 (Act).
27. I accept that this behaviour of the Tenants is ongoing despite the fact Landlord on several occasions asked the Tenants to refrain from damaging the rental unit and residential complex.
28. Further, since the time of application, the Tenants has continued to damage the property, there was an incident on December 31, 2021, where a double thermal window at the front door of the residential complex was smashed by the Tenants. The Landlord testified the Tenants advised him it was broken during a party they were hosting. This resulted in a repair cost to the Landlord in the amount of \$717.83, this repair was done by A Star Glass and Mirror.

Compensation for damages

29. The Tenants, another occupant of the rental unit or a person whom the Tenants permitted in the residential complex wilfully or negligently caused undue damage to the rental unit or residential complex.
30. The Landlord will incur reasonable costs of \$8,600.00 to repair and replace property that was damaged and cannot be repaired.

Landlord's Evidence

31. The Landlord testified that he is a contractor and has estimated the costs of repair or replacement based on his professional experience. He states that he will be doing some of the repairs himself and he will hire qualified professionals for the jobs that he is not qualified to do. He notes that the amounts claimed on his application to repair or replace the damaged property were quotes from December 29, 2021, the date in which he filed the application and that he estimates the price of materials and labour have substantially increased as much as thirty to forty percent. He also notes that the condition of the chain link fence is now far worse, and he does not feel that it can be repaired and that the entire fence now must be replaced.
32. The breakdown of the costs to repair and replace the Landlord is requesting is as follows:

- |    |  |           |
|----|--|-----------|
| a) | Chain link fence- approximately 100 feet           | \$300.00  |
| b) | Window screen net in common area stairwell         | \$100.00  |
| c) | Wooden fence- approximately 60 feet                | \$1500.00 |
| d) | Drywall repair in common area laundry room         | \$500.00  |
| e) | Carpet repair and window frame repair due to burns | \$600.00  |
| f) | Oak wood railing                                   | \$2500.00 |
| g) | Front door trim                                    | \$150.00  |
| h) | Front door lock                                    | \$150.00  |
| i) | Bathtub  | \$500.00  |
| j) | Wood Floors  | \$1400.00 |
| k) | Kitchen Faucet                                     | \$250.00  |
| l) | Window screens                                     | \$100.00  |
| m) | Window frame                                       | \$600.00  |
| n) | Fire alarm   | \$100.00  |

33. The Landlord testified that the repairs or replacement of the above items have not been completed except for the front door lock and the fire alarm.

Analysis

34. Under section 89 of the Act, 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.

35. Based on the uncontested evidence of the Landlord, I find that the Tenants caused this damage, and the damage was undue. I base this on the photographs submitted into evidence, showing substantial damage throughout the rental unit and residential complex and the Landlord's uncontested testimony.
36. I accept the uncontested testimony of the Landlord that he has tried on several occasions to speak to the Tenants regarding the damage, however the damage to the residential complex and rental unit continues.
37. The remaining issue is whether the Landlord's claim for \$8,750.00 to repair or replace the damage is reasonable. I find that it is, except for \$150.00 for the front door lock replacement.
38. I do not find the Tenants should be responsible for the replacement costs of the front door lock of \$150.00. The Landlord testified that it was the Tenants that called him to advise him the lock was broken. There was no evidence before me that the Landlord had a discussion with the Tenants on how the lock became broken or that the Tenants took responsibility for the damaged lock. The Landlord only speculates that the damage was likely caused by the Tenants using force on the locking system.
39. While, the Landlord did not provide photographs of the bathtub or the wood floors, I am satisfied on a balance of probabilities that the explanation of the extent of the damage to both the bathtub and the floors were caused by the Tenant's dogs and the extent of the damage does not represent normal wear and tear.
40. I also find that it was reasonable for Landlord to minimize the costs by doing some of the repairs himself as he is a contractor. I also note that the cost of materials have substantially increased since the Landlords application was filed and that the condition of the chain link fence that required repair are now more extensive and will need to be replaced.
41. Therefore, I am granting an order requiring the Tenants to pay the Landlord \$8600.00, because I am satisfied based on the Landlord's uncontested testimony that this represents the reasonable costs of replacing or repairing the damaged property.

Relief from eviction

42. 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.
43. The Landlord did not have any knowledge of the Tenant's personal circumstances. The Tenants were not present at the hearing to provide any circumstances and there is otherwise no evidence in the record before me suggesting that the eviction ought to be refused or postponed.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenants is terminated, as of September 23, 2023. The Tenants must move out of the rental unit on or before September 23, 2023.
2. The Tenants shall pay to the Landlord \$8,600.00, which represents the reasonable costs of repairing and replacing the damaged property.
3. The Tenants shall also pay to the Landlord \$186.00 for the cost of filing the application.
4. If the Tenants do not pay the Landlord the full amount owing in Paragraph 2 and 3 above, on or before September 23, 2023, the Tenants will start to owe interest. This will be simple interest calculated from September 24, 2023 at 6.0% annually on the balance outstanding.
5. If the unit is not vacated on or before September 23, 2023, then starting September 24, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. 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 September 24, 2023.

2023 ONL TB 60884 (CanLII)

**September 12, 2023**

**Date Issued**

---

**Carson**

**Trish**

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 Tenants expires on March 24, 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.



