



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

Citation: Hamilton v Stewart, 2023 ONLTB 60245

Date: 2023-08-31

File Number: LTB-L-042858-22

2023 ONLTB 60245 (CanLII)

In the matter of: C, 246 Main Street
Chesterville ON K0C1H0

Between: Christine Hamilton Landlord

And

Kathryn Stewart Tenant

Christine Hamilton (the 'Landlord') applied for an order to terminate the tenancy and evict Kathryn Stewart (the 'Tenant') because:

- 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.

Christine Hamilton (the 'Landlord') also applied for an order requiring Kathryn Stewart (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.

Only the Landlord, attended the hearing.

Determinations:

1. On July 29, 2022, the Landlord gave the Tenant a first, voidable N5 notice of termination with a termination date of August 12, 2022. Therefore, the Landlord was allowed to give the

Tenant a second, non-voidable N5 notice of termination under section 68 of the *Residential Tenancies Act, 2006* (Act).

2. The Tenant did not correct the behaviour identified in the first N5 notice and the Landlord served the Tenant a second N5 notice with a termination date of October 31, 2022.
3. The Tenant vacated the rental unit on November 26, 2022.
4. The Landlord filed the application with the Board on July 7, 2022.
5. The Tenant was in possession of the rental unit on the day the Landlord filed the application with the Board.
6. 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 \$4.66 is owing to the Tenant for the period from August 1, 2022 to November 26, 2022.
7. 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.
8. 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 or residential complex.
9. The Landlord alleges the Tenant wilfully and negligently caused damage to the rental unit and lists damaged walls, broken handrail with spindles, window replacement, grease marks on walls and damage to the rental unit from the Tenant's two cats.
10. The Landlord has incurred reasonable costs of \$5,000.00 to repair and the damage and replace the property that was damaged and cannot be repaired.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Landlord's Request to Amend L2 Application

12. At the hearing the Landlord requested to amend the L2 application filed with the Board. The Landlord's position is after she filed the L2 application with the Board on August 2, 2022 the Tenant caused further damage up to the day the Tenant vacated on November 26, 2022.

13. Board Rules of Procedure: Rule 15 - Amending Applications

- 15.1 A request to amend an application before the hearing must be: a)
in writing;

- b) served with the amended application to all other parties; and
- c) filed with LTB with the amended application and a completed Certificate of Service.

15.3 The request to amend will be decided at the hearing after considering:

- a) whether the amendment was requested as soon as the need for it was known;
- b) any prejudice a party may experience as a result of the amendment;
- c) whether the amendment is significant enough to warrant any delay that may be caused by the amendment;
- d) whether the amendment is necessary and was requested in good faith; and
- e) any other relevant factors.

15.4 The LTB may exercise its discretion to grant a request to amend made at the hearing if satisfied the amendment is appropriate, would not prejudice any party and is consistent with a fair and expeditious proceeding.

- 14. The Landlord's legal representative submitted a request to the Board to serve the Tenant the amended L2 application by email. The Member issued an endorsement denying the Landlord the request to serve the former Tenant the amended L2 application by email.
- 15. For the following reasons I am denying the Landlord's request to amend the L2 application for the increased amount of damage the Landlord is claiming.
- 16. The Landlord failed to adhere to Rule 15.1(B) and 15.1(c). While the Landlord did make a request to the Board to alternatively serve the former Tenant this request was denied as the Landlord failed to provide why the Board's Rules were insufficient to serve the Tenant the amended L2 application.
- 17. Further, the Landlord's original L2 application had damage claim of \$5,000.00, the amended L2 application is claiming \$11,540.00 more than double the original damage claim. I considered the Board's Rule 15.3(b) and the prejudice to the Tenant having not been informed of the increase in damage the Landlord was claiming.
- 18. Although I am satisfied the Landlord notified the Board in proper compliance with the Rules, I am not satisfied that granting the application would not be prejudicial to the Tenant.
- 19. The Landlord's request to amend the L2 application is denied.

Landlord's L2 Application

20. It was the uncontested testimony of the Landlord that she claims the Tenant wilfully caused damage to the rental unit.
21. To support her claim the Landlord submitted a detailed list of damaged items and the cost required to replace or repair them.
22. The Landlord also provide photo evidence to support her claim of the damage caused by the former Tenant.
23. In the photos there are many holes in the rental unit walls, stains on carpet, broken doors and door hinges and multiple deep scratches on the floor.
24. The largest cost attributed to the Landlord's claim of damage is the handrail and spindles. The Landlord submitted photo evidence of the handrail spindles on the stairs that appear to have been damaged by a cat scratching on them over a long period of time.
25. The Landlord is seeking a total of \$5,000.00 in damage which includes labour costs, materials and dump fees associated with the repairs.
26. As the Tenant has vacated the rental unit an order for eviction is not before me and the remaining claims of the Landlord's L2 application are with respect to the allege damage.
27. With the uncontested evidence before me and on a balance of probabilities I find the Tenant did wilfully and negligently caused damage to the Landlord's rental unit, and I am granting the Landlord's request for damage in the amount of \$5,000.00.

It is ordered that:

1. tenancy between the Landlord and the Tenant is terminated as of November 26, 2022.
2. The Tenant shall pay to the Landlord \$5,000.00, which represents the reasonable costs of repairing and 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 \$1,204.66 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 \$3,795.34.
6. If the Tenant does not pay the Landlord the full amount owing on or before September 11, 2023, the Tenant will start to owe interest. This will be simple interest calculated from September 12, 2023 at 6.00% annually on the balance outstanding.

August 31, 2023

Date Issued

Greg Brocanier

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.