



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

**Citation:** The Corporation of the County of Wellington v Cudney, 2023 ONLTB 58143

**Date:** 2023-08-29

**File Number:** LTB-L-030083-23

**In the matter of:** 224, 576 WOOLWICH ST  
GUELPH ON N1H3Y3

**Between:** The Corporation of the County of Wellington Landlord

**And**

Kody Cudney Tenant

The Corporation of the County of Wellington (the 'Landlord') applied for an order to terminate the tenancy and evict Kody Cudney (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 Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex;
- 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.

The Corporation of the County of Wellington (the 'Landlord') also applied for an order requiring Kody Cudney (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 August 15, 2023.

The Landlord's Agent Ashley Riehl and the Landlord's Legal Representative Peter Schroeder and the Tenant Kody Cudney attended the hearing. The Tenant was represented by Tenant Duty Counsel Britney Rodgers. Adele Arpino and Louise McCarthy attended with the Tenant as support.

**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.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On April 12, 2023, the Landlord served the Tenant an N7 notice of termination with a termination date of May 31, 2023. The notice of termination contains the following allegations:
  - a) On March 29, 2023, the Landlord received a report that it sounded like items were being violently smashed in the rental unit as well as the sound of a fire safety device being tampered with. Written notice of entry was provided so the Landlord could conduct an inspection of the rental unit on March 31, 2023
  - b) On March 31, 2023, employees of the Landlord conducted an inspection and discovered the following damage and fire hazards:
    - Hallway linen closet destroyed.
    - Most kitchen cabinet doors removed and missing.
    - Kitchen stove door damaged severely and ripped from stove.
    - Stove range hood is badly damaged and appears to be bashed inwards.
    - Storage closet adjacent to the kitchen is destroyed and taped over.
    - Fire safety device fixtures (strobe/horn) in the walls damaged and wall ripped out to the studs.
    - Affixed smoke detector and surrounding ceiling material ripped out of ceiling. Live wires hanging.
    - Patio door is blocked by furniture preventing egress in an emergency.
    - Evidence of careless smoking in rental unit living room.

- Many walls are severely and intentionally damaged. The rubble from the walls is scattered in piles throughout the unit.
  - Inside of the rental unit front door is damaged, showing significant dents, scratches and marks.
  - Bathtub damaged and chipped.
  - Bathroom mirror is smashed.
- c) The Landlord immediately repaired the damaged fire safety devices on the same day of the inspection. The rest of the unit is essentially destroyed and the Landlord's preliminary estimate is approximately \$10,000.00 if the floor is salvageable and \$15,000.00 if it is not.
- d) On April 3, 2023, the Landlord's Maintenance Coordinator reported the fire alarm panel at the residential complex indicated a problem in the system located in the rental unit. An emergency inspection of the rental unit was conducted and it was discovered the heat detector and newly re-installed strobe/horn were both intentionally damaged. The fire safety devices were again replaced at a cost of approximately \$700.00.
4. Ashely Riehl testified on behalf of the Landlord. She is the Tenant Services Manager for the County of Wellington.
  5. The residential complex is a two-storey sprawl containing 100 units. The Tenant resides in unit 224.
  6. Ms. Riehl testified that on March 29, 2023, Lynne Johnson, a Property Services Officer for the County of Wellington received a report from another tenant that the fire alarm system in the rental unit was emitting sounds indicative of malfunction. Additional noises were also reported to be coming from the rental unit. The Landlord provided written notice to the Tenant to conduct an inspection of the unit on March 31, 2023.
  7. On March 31, 2023, the Landlord conducted an inspection of the rental unit. The Landlord submitted several photographs taken by Lynne Johnson during the inspection. Lynne Johnson did not attend the hearing. Ms. Riehl was not present for the inspection and did not observe the rental unit on that date. Her most recent visit to the rental unit was on July 26, 2023 and she testified the photographs being relied upon accurately depict the observations she made on July 26, 2023. I asked the Tenant if the condition of the rental unit was in dispute and the Tenant confirmed it was not.
  8. The photographs taken on March 31, 2023 and submitted by the Landlord clearly show the damage articulated on the N7 notice. The only allegation I did not see evidence of was in relation to careless smoking. The smoke alarms are removed and much of the unit is

destroyed. Drywall is ripped from the studs, the stove is ruined, the patio door is blocked and the floor is covered in debris. The door appears to have several dents and other markings on it. The vanity mirror has been damaged.

9. Ms. Riehl testified that the fire alarm system in the rental unit was repaired and replaced on March 31, 2023. On April 3, 2023, the Tenant again damaged the fire safety alarm equipment that had been repaired and replaced three days earlier. The Landlord submitted photographs taken on April 3, 2023 showing the fire alarm and heat detector being damaged and removed.
10. The Tenant did not dispute the Landlord's evidence and no objection was taken with it. The Tenant agreed the state of the unit was as depicted in the photographs. The Tenant testified the damage was mostly caused by throwing his skateboard. The Tenant further testified he hears women being tortured and he tries to get this to stop by banging and throwing his skateboard.
11. I am satisfied on a balance of probabilities the Tenant has seriously impaired the safety of any person and the act or omission occurred in the residential complex. Damaging and removing the fire detection system on two occasions clearly impairs the safety of the Tenant and other residents in the complex as fire detection is a vital safety requirement.
12. I am also satisfied on a balance of probabilities the Tenant has wilfully caused undue damage to the premises. The damage presented by the Landlord and acknowledged by the Tenant is so severe and extensive, it could not have been caused by accident or mere negligence. I am convinced the damage to the unit was done wilfully by the Tenant. This finding is supported in part by the Tenant's evidence that the damage was caused by him throwing his skateboard. While I do not find throwing a skateboard alone could account for all the damage to the rental unit, throwing a skateboard is done wilfully.

#### Conduct Since the N7 Notice was Served

13. The Landlord's evidence was that since the N7 notice of termination was served the conditions of the rental unit have worsened. Ms. Riehl testified that May 23, 2023, her staff reported to her that the plumbing and the bathroom in the rental unit had been damaged. The Landlord submitted photographs showing the bathroom in complete shambles. The toilet is broken and the sink is smashed and in pieces on the floor. Walls are see through due to the removal of drywall. Ms. Riehl testified the damage to the toilet had caused a flood in the rental unit. Ms. Riehl also testified the Landlord had plywood installed over wires that were exposed by the Tenant when the drywall was removed.
14. Photographs taken on June 8, 2023 show additional damage to the rental unit as the bathroom shower tiles have been damaged and some have been removed. More walls have been damaged with further removal of drywall. A photograph of the bathtub is unrecognizable as such.
15. The Landlord submitted photographs taken on June 16, 2023 showing a room with garbage and debris piled almost ceiling height. The other photographs are examples of a

clear progression of damage that has been occurring in the rental unit since before the N7 notice was served. The rental unit has been completely destroyed, most of it reduced to rubble.

16. I asked the Tenant if these photographs also accurately showed the condition of the rental unit and the Tenant confirmed that they did.

#### Monetary Damage Claim

17. The Landlord sought an order for \$15,700.00 for the reasonable costs they have or will incur to repair or replace the damage caused by the Tenant. The Landlord submitted an estimate from JM Vivash Renovations into evidence. The estimated cost to repair the damage to the rental unit as of June 1, 2023 is \$31,262.59.
18. The Landlord did not request an amendment to their application to reflect the higher amount and submitted they would only seek the \$15,700.00 originally claimed on their application. I find this amount to be reasonable.
19. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

#### N5 Notices

20. Since I have already found the Landlord has proven the Tenant has seriously impaired the safety of any person at the residential complex and willfully damaged the rental unit, I find it unnecessary to make a determination on the noise allegation contained on the N5 notices served on the Tenant.

#### Section 83 Considerations

21. The Tenant testified that he suffers from depression and anxiety. He was also diagnosed with a learning disability in June 2023.
22. The Tenant was asked how his anxiety and depression have contributed to the damage in the rental unit. The Tenant replied that at his former home he was physically abused. The Tenant also was asked what impact his learning disability has on him and he testified he does not like going out and being around other people.
23. No medical evidence was submitted at the hearing. While I find it most likely the Tenant has a disability, no evidence was presented linking the conduct of the Tenant with his disability. Without more evidence, I am not convinced on a balance of probabilities depression, anxiety and the Tenant's learning disability caused or contributed to the behaviour of the Tenant.
24. Nevertheless, the Landlord has attempted to accommodate and work with the Tenant recognizing he has a disability. The Landlord's evidence was the Tenant took possession

of the rental unit in September of 2022 and issues arose shortly thereafter. The Landlord intervened in the hopes of creating a successful tenancy.

25. The Landlord has provided the Tenant with support workers several times per week. These support workers discuss and brainstorm with the Tenant to come up with ideas to help him deal with his disability. Ms. Riehl described the Tenant as a highly connected tenant with the supports available. Ms. Riehl testified that case conferences are held with support staff and the Tenant. The most recent conference was July 25, 2023. Ms. Riehl last attended a conference with the Tenant in late May 2023.
26. It is clear the Landlord's attempts to accommodate the Tenant to avoid his destructive behaviour have not succeeded. I do not find it is the Landlord's responsibility alone to find a permanent solution to the Tenant's destructive conduct. No evidence was presented that any strategies or ideas have been presented to the Landlord and rejected. I asked the Tenant if he receives any treatment or takes medication for his disability and he answered that he does not.
27. While I am not convinced the Tenant's disability has led to the conduct that has destroyed the rental unit, I am convinced the Landlord has done what they could to help and accommodate the Tenant. Quite frankly, apart from continuously repairing and rebuilding the rental unit, in the absence of medical evidence, I do not know what more could be done in the circumstances.
28. The Landlord's evidence was several tenants have been transferred out of the residential complex due to the disruptions and noise caused by the Tenant. I can infer the damage to the rental unit was not done in silence and has had an impact on others residing in the building. These units now sit vacant as they cannot be rented due to the issues with the Tenant. These units are subsidized and there is currently an eight year wait to reside in one.
29. The Tenant's evidence was he receives ODSP and his monthly rent is \$145.00. He stated he has nowhere else to go and wants to remain in the rental unit. His evidence was he is too old for shelters because he is older than 25 years of age. He believes he would be robbed and hurt if he was evicted and alone. The Tenant believes he could pay the Landlord \$200.00 per month towards the damage he has caused. He also stated that if he were to be evicted, he would need two months to find somewhere else to live.
30. I have turned my mind to whether the Tenant could be accommodated by a conditional order. Since I do not find the Tenant's disability is connected to his destructive conduct I am not convinced a conditional order is appropriate or would succeed. No evidence was presented that showed the Tenant's behaviour was likely to change or improve.
31. 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 not be unfair to postpone the eviction until October 29, 2023 pursuant to subsection 83(1)(b) of the Act. This will provide the Tenant 60 days from the date of this order to find alternate living

accommodations. The Board recognizes the pressing interests of the Landlord while remaining mindful the Tenant will need to access help and supports in finding a new home.

**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 October 29, 2023.
2. If the unit is not vacated on or before October 29, 2023, then starting October 30, 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 October 30, 2023.
4. The Tenant shall pay to the Landlord \$15,700.00, which represents the reasonable costs of repairing the damage and 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 \$15,886.00.
7. If the Tenant does not pay the Landlord the full amount owing on or before October 29, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 30, 2023 at 6.00% annually on the balance outstanding.

**August 29, 2023**

**Date Issued**

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John Cashmore

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 April 30, 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.

