



Order under Section 69 Residential Tenancies Act, 2006

Citation: Caruano v Vanoers, 2023 ONLTB 58012

Date: 2023-08-25

File Number: LTB-L-042310-23

In the matter of: 7811 HIGHWAY 89
ALLISTON ON L9R1V1

Between: Stefano Caruano and Carmela Caruano Landlords

And

Peggy Vanoers, Annylia Gellizeau, Dave Self and Mark Rodgerson Tenants

Stefano Caruano and Carmela Caruano (the 'Landlords') applied for an order to terminate the tenancy and evict Peggy Vanoers, Annylia Gellizeau, Dave Self and Mark Rodgerson (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe ('L1 Application').

The Landlords also applied for an order to terminate the tenancy and evict the Tenants because:

- the Tenants, another occupant of the rental unit or someone the Tenants 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 Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully or negligently caused damage to the premises;
- the Tenants, another occupant of the rental unit or a person the Tenants permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex; and
- the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year ('L2 Application')

The Landlords also applied for an order requiring 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 Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex ('L2 Application').

This application was heard by videoconference on July 6, 2023.

Only the Landlords, the Landlords' witness, Melissa Caruano ('MC'), and the Landlords' legal representative, Kimberly Brock ('KB'), attended the hearing.

As of 9:33 a.m., 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 Landlords' evidence.

Determinations:

L1 Application

1. The Landlords served the Tenants with a valid Notice to End Tenancy Early for Nonpayment of Rent (N4 Notice). The Tenants did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
2. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The lawful rent is \$1,800.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$59.18. This amount is calculated as follows: \$1,800.00 x 12, divided by 365 days.
5. The Tenants have not made any payments since the application was filed.
6. The rent arrears owing to July 31, 2023 are \$5,400.00.
7. The Landlords incurred costs of \$186.00 for filing the application and are entitled to reimbursement of those costs.
8. There is no last month's rent deposit.

L2 Application

N7 Notice

9. On May 18, 2023, the Landlords gave the Tenants an N7 notice of termination of tenancy, alleging the Tenants had seriously impaired the safety of someone in the residential complex. At the outset of the hearing, the Landlords sought to withdraw the allegations in the N7 notice, and the LTB consented to the withdrawal.

N12 Notice

10. On May 11, 2023, the Landlords gave the Tenants an N12 notice of termination with the termination date of July 31, 2023. The Landlords claim that they require vacant possession of the rental unit for the purpose of residential occupation by their daughter, MC.

11. MC attended the hearing and gave evidence.
12. The rental unit is a detached single-family home.
13. She testified that her parents are allowing her to stay in the rental unit, and she plans to live there as long as she can. She said it would definitely be more than one year.
14. MC said that she has been living with her parents for the past 3 years, but she feels it is time for her to be out on her own, and her parents want to help her. Much of MC's personal property is presently stored in her parents' garage because there is nowhere else to put it. She said it is inconvenient to live like this.
15. Carmela Caruano also gave evidence. She said that she wants to end the tenancy for her daughter, MC, to move into the rental unit. She also said that the Landlords gave the Tenants the requisite compensation required by section 48.1 of the Act by forgiving one month of rent arrears. She entered into evidence a letter delivered to the Tenants in person on or about May 11, 2023 together with the N12 notice explaining that the Tenants had two months of rent arrears at the time, and one of those months of arrears was forgiven as compensation.
16. The Landlord in good faith requires possession of the rental unit for the purpose of MC's residential occupation for a period of at least one year.
17. The Landlord has compensated the Tenant an amount equal to one month's rent by July 31, 2023.

N5 Notice and Claim for Compensation for Damage

18. On May 18, 2023, the Landlord gave the Tenant an N5 notice of termination. The notice of termination contains the following allegations:
 - a. March 31, 2023: The Tenants told the Landlords they are making extra money by allowing people to dump dirt and garbage in an exterior area of the rental unit, without the Landlords' permission. The Landlords did not know if the dirt is hazardous in any way. The Landlords requested that the dirt and garbage be removed, but the Tenants did not do so.
 - b. May 8, 2023: The Landlords discovered that more garbage had been dumped at the rental unit, and that this had damaged the grass. The grass was damaged and had deep tire marks in it. The Landlord estimated it would cost \$1,000.00 to repair the grass.
19. MC also gave evidence about this issue. She entered into evidence several photographs that she took on March 31, 2023, showing a pile of dirt on the property as well as numerous tire tracks in the dirt. She also entered as evidence several photos that she took on May 8, 2023 showing the tire tracks in the grass as well as various garbage and debris around the exterior of the rental unit.

20. The grass has obviously been damaged by someone driving on it, leaving deep tire tracks. I find that this damage was caused by the willful or negligent conduct of the Tenants or someone they permitted on the property.
21. The Tenants did not stop the conduct or activity correct the omission within seven days after receiving the N5 notice of termination. The dirt, debris, and garbage was never removed, the damage to the grass was never repaired, and the Tenants did not pay the Landlord any money for the cost of repair. Therefore, the Tenants did not void the N5 notice of termination in accordance with s.64(3) of the Residential Tenancies Act, 2006 (Act).
22. This conduct has substantially interfered with the Landlords' reasonable enjoyment of the residential complex. The Tenants' willful or negligent conduct has also caused undue damage to the rental unit or residential complex.
23. The Landlords claimed \$1,000.00 for the repair of the undue damage caused to the rental unit by the Tenants' conduct. MC said that the Landlords do not have an estimate of the cost to repair the undue damage, but it may be up to \$10,000.00, because "there is a lot". She said the Landlords only sought \$1,000.00 because they do not know they cost, and this amount would not be unfair to the Tenants.
24. To prove a fact on a balance of probabilities, there must always be sufficient clear, convincing, and cogent evidence of the fact: *FH v. McDougall*, 2008 SCC 53 (CanLII), para 46. In this case, the Landlords failed to discharge this burden with respect to the cost to repair the undue damage caused to the rental unit by the Tenants' willful or negligent conduct. There was no evidence at all of the cost, except for MC's statement that it would likely cost much more than \$1,000.00. For example, there was no detailed assessment of the damage, no estimate to repair, no invoice for repairs, or other documentation to support the Landlords' evidence about the cost of repairs.
25. The Landlords' claim for compensation for damage must therefore be dismissed.

Relief from Eviction

26. The Landlords reached out to the Tenants to try to arrange a payment plan for the rent arrears on May 11, 2023, but received no response. The Landlords were not aware of any other circumstances that should be considered with respect to whether eviction should be delayed or denied.
27. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlords attempted to negotiate a repayment agreement with the Tenants, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

1. The L2 Application as it relates to the N7 notice is withdrawn.
2. The Landlords' claim for compensation relation to the undue damage to the rental unit is dismissed.
3. Pursuant to the L2 Application as it relates to the N12 notice and the N5 notice, the tenancy between the Landlords and the Tenants is terminated. The Tenants must move out of the rental unit by September 5, 2023.
4. The Tenants shall pay to the Landlords \$4,141.08. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
5. The Tenants shall also pay the Landlords compensation of \$59.18 per day for the use of the unit starting July 7, 2023 until the date the Tenants moves out of the unit.
6. If the Tenants do not pay the Landlords the full amount owing on or before September 5, 2023, the Tenants will start to owe interest. This will be simple interest calculated from September 6, 2023 at 6.00% annually on the balance outstanding.
7. If the unit is not vacated on or before September 5, 2023, then starting September 6, 2023, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
8. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or after September 6, 2023.

August 25, 2023

Date Issued

Mark Melchers

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 expires on March 6, 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.

**Schedule 1
SUMMARY OF CALCULATIONS**

A. Amount the Tenants must pay because the tenancy is terminated

Rent Owing To Hearing Date	\$3,955.08
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$0.00
Less the amount of the interest on the last month's rent deposit	- \$0.00
Less the amount the Landlords owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$0.00
Total amount owing to the Landlords	\$4,141.08
Plus daily compensation owing for each day of occupation starting July 7, 2023	\$59.18 (per day)

2023 ONL TB 58012 (CanLI)