



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

**Citation:** Bergen v St. Onge, 2023 ONLTB 51886

**Date:** 2023-08-03

**File Number:** LTB-L-027961-22

**In the matter of:** 3, 449 WELLINGTON ST, SARNIA ON N7T1H7

**Between:** Bernardo Bergen Landlord

**And**

Meghann St. Onge Tenant

2023 ONLTB 51886 (CanLI)

Bernardo Bergen (the 'Landlord') applied for an order to terminate the tenancy and evict Meghann St. Onge (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.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

Bernardo Bergen (the 'Landlord') also applied for an order requiring Meghann St. Onge (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 June 12, 2023.

Only the Landlord and Landlord's representative, Christine Croft attended the hearing.

As of 11: 58 a.m., 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/or the claim for compensation in the application. Therefore, the application is granted and the tenancy will terminate.
2. The Tenant was in possession of the rental unit on the date the application was filed.

Termination of the tenancy

3. On April 14, 2022, the Landlord gave the Tenant an N5 notice of termination. The notice of termination alleges the tenant, the tenant's guest or another occupant of the rental unit wilfully or negligently damaged the rental unit or the residential complex. The specific allegations in the notice are as follows:

- On December 23, 2021, the Tenant left the water running in the kitchen sink. This caused flooding through the floors and into the main floor and basement
- On January 12, 2021, the Tenant was provided with a valid Notice of Entry to assessment damage in the kitchen however, the area was in accessible due to the Tenant's dogs.
- The lease document requires the Tenant to have insurance coverage. The Landlord requested proof of insurance coverage and the Tenant has failed to provide insurance documents.
- March 7, 2022 the Tenant was served with Notice of Entry to complete repairs ordered by ESA and the Tenant denied the entry.
- March 18, 2022 the Tenant was served with Notice of Entry to complete repairs ordered by ESA and the Tenant denied the entry.
- March 27, 2022 water leaked through the ceiling of the main floor. The Tenant was approached regarding the leak and she indicated a plumbing issue in the bathtub. The Tenant refused entry to the Landlord to determine where the leak was coming from.

4. The N5 notice was served under served under section 62(1) of the *Residential Tenancies Act, 2006* (Act):

**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.

5. The Tenant did not repair the damage, pay the Landlord the reasonable costs to repair the damage or make arrangements satisfactory to the Landlord within seven days after receiving the N5 notice of termination. Therefore, the Tenant did not void the N5 notice of termination in accordance with section 62(3) of the Act.

### Analysis

6. I find that based on the uncontested evidence before me, the Tenant or an occupant of the rental unit or a person permitted in the residential complex by the Tenant has wilfully or negligently caused undue damage to the rental unit or residential complex as a result of a sink that overflowed on December 23, 2021 when a tap was left running. The sink overflowed and water leaked in the rental units below causing damage. The damages included the ceiling in the mid and lower unit and drywall damage in the mid and lower unit. The Tenant continually denied the Landlord entry to investigate, assess and repair the damages.

7. Another leak occurred on March 27, 2022 in the bathroom area of the rental unit the leak caused damage to the units below the Tenants. The Landlord attempted to enter the rental unit to determine what had happened however, the Tenant denied access.
8. The Landlord subsequently attempted to gain access to the rental unit to investigate, assess and repair the damages on January 12, 2021, March 7, 2021, and March 18, 2021. Each time, the Tenant denied the Landlord access. The units were finally repaired on April 10, 2021.
9. I 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 or residential complex The Tenant failed to ensure that the kitchen sink tap in her rental unit was turned off and failed to permit the Landlord to examine a plumbing issue, and as a result there was extensive flooding and damage.
10. The Tenant was required to pay the Landlord \$17,010.41 in daily compensation for use and occupation of the rental unit for the period from May 11, 2022 to June 12, 2023. All rent payments made by the Tenants since May 11, 2022, must be subtracted from this amount.
11. Based on the Monthly rent, the daily compensation is \$42.74. This amount is calculated as follows: \$1,300.00 x 12, divided by 365 days.
12. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
13. The Landlord collected a rent deposit of \$1,300.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$45.70 is owing to the Tenant for the period from July 10, 2021 to June 12, 2023.
14. 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.

#### Compensation for damages

15. The Landlord's claim for damages is made under section 89(1) of the *Residential Tenancies Act, 2006* (The Act):

**89 (1)** A landlord may apply to the Board for an order requiring a tenant or former 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,

1. while the tenant or former tenant is or was in possession of the rental unit, the tenant or former tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant or former tenant wilfully or negligently causes or caused undue damage to the rental unit or the residential complex.

16. On the balance of probabilities, I am satisfied that the Landlord has accurately established the damage the Tenant and/or occupant caused and the reasonable costs that the Landlord

has incurred reasonable costs of \$5,955.10 to repair the damage and/or replace property that was damaged and cannot be repaired.

17. The Landlord submitted an invoice detailing the repairs completed to the rental unit and the unit below. The repairs to the rental unit included treating for mold, new dry wall, removal of water damaged areas, paint and clean up.
18. The damages to the unit below were to remove water damaged area, dry wall, paint, treat for mold, disposal of waste.
19. The total cost to the Landlord \$5,955.10.

#### Relief from eviction

20. 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.
21. The Tenant did not attend the hearing to give evidence of their circumstances and thus, I did not have the opportunity to hear their evidence regarding their circumstances or to dispute 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 August 14, 2023.
2. If the unit is not vacated on or before August 14, 2023, then starting August 15, 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 August 15, 2023.
4. The Tenant shall pay to the Landlord \$5,955.10, which represents the reasonable costs of repairing the damage.
5. The Tenant was required to pay the Landlord \$17,010.41 in daily compensation for use and occupation of the rental unit for the period from May 11, 2022 to June 12, 2023. The Landlord owes \$1,345.70 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.
6. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
7. The total amount the Tenant owes the Landlord is \$15,850.71.

8. The Tenant shall also pay the Landlord compensation of \$42.74 per day for the use of the unit starting June 13, 2023 until the date the Tenant moves out of the unit.
9. If the Tenant does not pay the Landlord the full amount owing on or before August 14, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 15, 2023 at 6.00% annually on the balance outstanding.

**August 3, 2023**

**Date Issued**

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Camille Clyne

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 February 12, 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.