



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

Citation: Warner Place Seniors Residence v Albert, 2023 ONLTB 51882

Date: 2023-07-24

File Number: LTB-L-040131-22

In the matter of: 501, 430 WILLIAM ST
LONDON ON N6B3N6

Between: Warner Place Seniors Residence Landlord

And

Kathy Albert Tenant

Warner Place Seniors Residence (the 'Landlord') applied for an order to terminate the tenancy and evict Kathy Albert (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.

The Landlord also applied for an order requiring 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 13, 2023.

Only the Landlord's agent Barrie Norris(BN) and the Landlord's representative Thomas Schoenleber attended the hearing.

As of 11:05am, 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. The Tenant is in possession of the rental unit.
2. On July 08, 2022, the Landlord served the Tenant with an N5 notice pursuant to subsection 62 of the Residential Tenancies Act, 2006 (the 'Act'). The notice alleged that the Tenant, an occupant of the Tenant, or a person permitted in the residential complex by the Tenant caused wilful or negligent damage to the apartment's main door, bedroom door, storage room door and shelves, cabinet door and handles, walls, smoke and alarm detectors, and the LED fixtures. The Landlord alleged that they discovered the damage on June 30, 2022 during an inspection of the rental unit.

3. Subsection 62(3) of the Act states that a tenant can void an N5 Notice by repairing the damaged property or paying the landlord the reasonable costs of repairing or replacing the damaged property if it is not reasonable to repair it. Subsection 62(3) also provides that the tenant can make satisfactory arrangements with the Landlord to repair the damaged property or to pay for the replacement of the damaged property.
4. In this case, the seven-day voiding period began on July 09, 2022 and ended on July 16, 2022.
5. BN testified that when he entered the rental unit on June 30, 2022, to conduct the inspection, he noticed the damage to the apartment's main door, bedroom door, storage room door and shelves, cabinet door and handles, walls, smoke and alarm detectors, and the LED fixtures.
6. The Landlord submitted 70-page photographs of the damaged items into evidence, showing the bedroom, storage, and the main apartment broken doors, missing cabinet doors and handles, storage shelves, smoke and alarm detectors, and LED fixtures.
7. BN testified that 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 Residential Tenancies Act, 2006 (Act).
8. Based on the uncontested evidence, I find it more likely than not that the Tenant and an occupant of the rental unit wilfully or negligently caused damage to the residential complex by damaging the apartment, bedroom, and storage doors, missing cabinet doors and handles, storage shelves, smoke and alarm detectors, and LED fixtures, and failed to pay the cost to repair or replace the damage.
9. Subsection 89(1) of the Act gives the Board the authority to award a landlord damages. It provides as follows

“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”.
10. The Landlord submitted an estimate together with the 70-page photographs to the Board as evidence to substantiate the amounts the Landlord seeks for the damage to apartment, bedroom, and storage doors, cabinet doors and handles, storage shelves, smoke and alarm detectors, and LED fixtures, and failed to pay the cost to repair or replace the damage. The estimate indicated that the total cost to repair and replace all these items, including labour, will be \$4,143.96.
11. After reviewing all the evidence and given all these factors concerning the condition of the unit, I am satisfied that the Landlord's estimate for the damaged apartment, bedroom, storage doors, cabinet door and handles, storage shelves, smoke and alarm detectors,

and LED fixtures can be reasonably repaired and replaced at the cost of \$4,143.96. Therefore, the total amount the Tenant will be ordered to pay is \$4,143.96.

12. 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.

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 4, 2023.
2. The Tenant shall pay to the Landlord \$4,143.96, which represents the reasonable costs of repairing the damaged property.
3. The Tenant shall pay to the Landlord \$7,928.71, which represents compensation for the use of the unit from August 1, 2022 to July 13, 2023.
4. The Tenant shall also pay the Landlord compensation of \$22.85 per day for the use of the unit starting July 14, 2023 until the date the Tenant moves out of the unit.
5. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
6. If the unit is not vacated on or before August 4, 2023, then starting August 5, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
7. 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 5, 2023.
8. If the Tenant does not pay the Landlord the full amount owing on or before August 4, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 5, 2023 at 6.00% annually on the balance outstanding.

July 24, 2023
Date Issued

Percy Laryea
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 5, 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.