



**Order under Section 69 / 88.2
Residential Tenancies Act, 2006**

Citation: Costain v Frydman, 2023 ONLTB 51789

Date: 2023-07-24

File Number: LTB-L-040129-22

In the matter of: 571 BERWICK CRES
OSHAWA ON L1J3E6

Between: Kevin Costain Landlord

And

Barry Frydman Tenant Robert Frydman

Kevin Costain (the 'Landlord') applied for an order to terminate the tenancy and evict Barry Frydman and Robert Frydman (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 expenses that are the result of the Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

This application was heard by videoconference on July 13, 2023.

Only the Landlord and the Landlord's representative Jordan Nieuwhof attended the hearing.

As of 10:36am, 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 vacated the rental unit on February 3, 2023.

2. On July 01, 2022, the Landlord served the Tenant with an N5 notice pursuant to subsection 62 of the *Residential Tenancies Act, 2006* (the 'Act') to terminate the tenancy on July 18, 2022. 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 security cameras, garage door, garage doorknob, and the patio door.

File Number: LTB-L-040129-22

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 02, 2022 and ended on July 09, 2022.
5. The Landlord testified that on June 25, 2022, the Tenant informed him around 9:00 am that he had misplaced his keys and needed a copy to re-enter the rental unit. The Landlord testified that he immediately informed the Tenant that he would bring him a copy of the keys. The Landlord testified that, about five minutes later, he received an email from the Tenant at 9:23 am, enclosed with photographs showing damage to the patio door. The Landlord testified that at 2:57 pm, the Tenant emailed him again to inform him about the damages he had caused to the security cameras, garage door, and garage doorknob.
6. The Landlord submitted into evidence email correspondence between the parties and photographs of the damaged items, which show the broken glass window of the patio door, damaged security cameras, dented garage door, and broken garage doorknob.
7. The Landlord 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 patio door, security cameras, garage door, garage doorknob, 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 provided a professional assessment, estimate, and provided by a contractor. He suggested to the Landlord the following:

- ✦ Install the broken security cameras at the cost of \$546.92.
- ✦ Replace the garage door at the cost of \$3,593.26
- ✦ Replace the fire rated door to the garage at \$635.06
- ✦ Replace the broken doorknob at \$60.99
- ✦ Replace the patio door at the cost of \$3,100.00

File Number: LTB-L-040129-22

2023 ONL TB 51789 (CanLII)

11. The photographs taken by the Landlord and submitted into evidence show broken glass window of the patio door, damaged security cameras, dented garage door, and broken garage doorknob.

12. Given all these factors concerning the condition of the unit, I find that the evidence of the professional assessment of damages and estimate to the broken patio door, damaged security cameras, dented garage door, and broken garage doorknob can be reasonably repaired and replaced at the cost of \$7,936.23.

13. The order contains all the reasons for the decisions within the order. No other reasons will be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of February 3, 2023.
2. The Tenant shall pay to the Landlord \$7,936.23, which represents the reasonable costs of repairing the damaged property.
3. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
4. The total amount the Tenant owes the Landlord is \$9,377.82.
5. 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.

2023 ONL TB 51789 (CanLII)