



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

**Citation:** Dhruba Koirala v Ahmed Mohammed, 2023 ONLTB 44053

**Date:** 2023-06-16

**File Number:** LTB-L-000360-23

**In the matter of:** 100 WESTBOURNE AVE  
SCARBOROUGH ON M1L2Y5

**Between:** Bindu Koirala Landlords  
Dhruba Koirala

**And**

Ahmed Mohammed Tenants  
Amy Mohammed  
Mashaier M.S. Abdalla  
Mohammed T.M. Eltahir

Bindu Koirala and Dhruba Koirala (the 'Landlord') applied for an order to terminate the tenancy and evict Ahmed Mohammed, Amy Mohammed, Mashaier M.S. Abdalla and Mohammed T.M. Eltahir (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; (N5 Notice)
- the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year. (N12 Notice)

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

The Landlords also applied for an order requiring the Tenants 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.

The Landlords also applied for an order requiring the Tenants to pay the Landlord's reasonable out-of-pocket costs the Landlords will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex.

This application was heard by videoconference on June 1, 2023.

Only the Landlords and the Landlords' Representative, Barrington Lue Sang attended the hearing.

As of 10:51am, 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:**

1. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy between the parties shall terminate June 28, 2023. The Tenants shall also pay the Landlords \$35,186.00 for damages being sought pursuant to section 88.2 of the Residential Tenancies Act, 2006 (the 'Act') and costs.
2. The Tenants were in possession of the rental unit on the day of the hearing.
3. The rental unit is a 4-bedroom detached home that was built in 2021. The Tenants are the only people to have resided in the home since its construction.
4. Rent is \$4,500.00/month.

N5 Notice of Termination

Evidence

5. On January 9, 2023, the Landlords gave the Tenants an N5 notice of termination deemed to be served January 14, 2023. The notice of termination alleges that the Tenants:
  - caused damage to the furnace due to improper use,
  - caused water damage to the rental unit and failed to report it to the Landlords, including damage to drywall, baseboards and causing mold growth,
  - Installed bidets in the two bathrooms in the rental unit without receiving any consent from the Landlords
  - Changed the door handles, and locks to doors inside and outside of the rental unit.
6. The Tenants 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 Tenants did not void the N5 notice of termination in accordance with section 62(3) of the *Residential Tenancies Act, 2006 (Act)*.
7. The Landlords presented photos of the rental unit prior to the Tenants taking possession of the unit. The photos showed that this was a newly built house with standard fixtures and no visible damage.

8. The Landlords testified that they entered the rental unit for inspections on July 6, July 19, October 19, and November 2, 2022. During each of those entries, the Tenants prevented the Landlords from entering some of the bedrooms.
9. On November 2, 2022, the Landlords discovered that the furnace had been damaged due to misuse. The Landlords discovered that the Tenants had removed all of the furnace filters and ran the furnace without any filtration. The Landlords had also discovered that the cold air intake into the furnace had been intentionally blocked by the Tenants. Due to these issues, the furnace had been damaged and required significant maintenance.
10. Also on November 2, 2022, the Landlords had discovered that the Tenants had installed spray bidet nozzles on the toilets in the two bathrooms in the unit without getting permission from the Landlords to do so. Furthermore, the bidets had been installed without any proper drainage. The lack of drainage was evident in water damage to the baseboards in both of the bathrooms, as well as in the drywall in the ceiling below the upstairs bathroom. The Landlords presented photos of the ceiling taken by the Landlords on November 2, 2022, showing that there had been significant water damage. There were signs of water blistering and deterioration of the drywall as well as a hole in the ceiling caused by the water damage.
11. On that same inspection on November 2, 2022, the Landlords had discovered that the Tenants had changed all of the doorhandles to the bedrooms and replaced them with locking doors. This was done without prior authorization from the Landlords.
12. Throughout early December 2022, the Landlords had several general contractors inspect the unit for the purpose of assessing the unit and determining what repairs are needed to be made. The general contractor reports confirmed the findings of the Landlords' earlier inspections as well as discovered that there were some mold issues. All of the contractors' reports stated that the water damage was caused by the improper installation and use of the bidets.
13. The Landlords presented two estimates provided by the contractors at the hearing. One report estimated the cost to repair the damages at \$34,500.00 and the other estimated the costs to be \$35,199.00.
14. The Landlords are claiming \$35,000.00 in damages on both the N5 notice and the L2 application.
15. The Landlords testified that at no time did the Tenants ever report any damages.
16. The Landlords' application also addresses unpaid utilities however, no evidence was presented at the hearing to support this claim.

### Analysis

17. Section 62(1) of the Act states:

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.

18. Section 89 of the Act states:

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,

(a) 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;

19. Based on the uncontested evidence before me, I am satisfied that the Tenants failed to void the N5 notice that was served to them by either repairing the rental unit or paying the Landlord \$35,000.00 for the necessary repairs to be made to the rental unit.
20. I find that the Tenants have both negligently and wilfully damaged the rental unit. Therefore, the tenancy between the Landlords and the Tenants is terminated. The Tenants must move out of the rental unit on or before June 27, 2023.
21. Pursuant to section 89 of the Act, the Landlords may ask the Board to order the Tenants to pay reasonable costs that the Landlords will incur for repairs and replacement of damaged property. Based on the evidence before me, I find that the costs of \$35,000.00 is reasonable under the circumstances.
22. Pursuant to section 207(1) of the Act, the Board may only make an award within the jurisdiction of the Small Claims Court, which is \$35,000.00. Therefore, the Board does not have the jurisdiction to make any other monetary award sought on this application.
23. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

N12 Notice of Termination

24. On December 16, 2022, the Landlords served the Tenants an N12 notice of termination with the termination date of February 28, 2023. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlords and their child.
25. The Landlords, in good faith, requires possession of the rental unit for the purpose of their own residential occupation for a period of at least one year.
26. The Landlord has compensated the Tenant an amount equal to one month's rent by February 28, 2023. The Landlords compensated the Tenants by giving them notice on

January 10, 2023, that they would waive the January 2023 rent in lieu of payment. I find that this delivery of compensation to the Tenants is acceptable.

27. The Landlord was employed as a doctor by the United Nations and was working overseas. The Landlords were looking to settle down in Toronto and purchased a new house in 2021. The Landlords were to complete their contract with the United Nations and then move back to Toronto with the intent of moving back to their new house. In the meantime, they would rent the house out to the Tenants.
28. The Landlord testified that he hurt his back and because of that, he returned to Toronto earlier than intended. The Landlords served the Tenants with the N12 with the purpose of taking back possession of the rental unit for their own residence. Since coming back to Toronto, the Landlords had to stay with their daughter in her two-bedroom apartment.
29. The Landlords testified that although they appreciate being able to live with their daughter, her home does not have enough room to house everyone and accommodate the extra medical needs the Landlord requires since injuring his back.
30. Based on the uncontested evidence before me, I am satisfied that the Landlords, in good faith, requires possession of the rental unit for the purpose of residential occupation for at least one year.
31. Since the Tenants did not attend the hearing, there were no section 83 arguments to be considered. Had the Tenants attended, they could have made submissions addressing why the tenancy should continue, or why any order for an eviction should be delayed.
32. 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 Landlords and the Tenants is terminated. The Tenants must move out of the rental unit on or before June 27, 2023.
2. If the unit is not vacated on or before June 27, 2023, then starting June 28, 2023, the Landlords 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 Landlords on or after June 28, 2023.
4. The Tenants shall pay to the Landlord \$35,000.00, which represents the reasonable costs of repairing the damage and replacing the damaged property.
5. The Tenants shall also pay to the Landlords \$186.00 for the cost of filing the application.
6. The Tenants shall pay the Landlords a total of \$35,186.00.

7. If the Tenants do not pay the Landlords the full amount owing on or before June 28, 2023, the Tenants will start to owe interest. This will be simple interest calculated from June 29, 2023 at 6.00% annually on the balance outstanding.

**June 16, 2023**

**Date Issued**

Robert Brown

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 December 28, 2023 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.