



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

Citation: Jenelle Ambrose v Paula Green, 2023 ONLTB 37723

Date: 2023-06-08

File Number: LTB-L-016708-23

In the matter of: 14, 630 ROGERS RD
YORK ON M6M0B4

Between: Jenelle Ambrose Landlord

And

Dwayne Fuller Tenants
Paula Green

2023 ONLTB 37723 (CanLII)

Jenelle Ambrose (the 'Landlord') applied for an order to terminate the tenancy and evict Dwayne Fuller and Paula Green (the 'Tenants') because:

- the Tenant, another occupant of the rental unit or someone the Tenant 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 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; and
- the Tenant has been persistently late in paying the Tenant's rent.

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

Jenelle Ambrose (the 'Landlord') also applied for an order requiring Dwayne Fuller and Paula Green (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.

This application was heard by videoconference on May 9, 2023. The Landlord and the Landlord's Legal Representative, B. Rubin, attended the hearing. As of 9:47 a.m., the Tenants were not present or represented at the hearing although properly served with notice of this hearing by the Board.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy will be terminated and payments ordered for the damage caused to the rental unit.
2. The Tenants were in possession of the rental unit on the date the application was filed.

Persistent Late Payment

3. On February 12, 2023, the Landlord gave the Tenants a Notice to End your Tenancy at the End of the Term (N8) with a termination date of March 5, 2023. The Landlord alleged in the notice that the Tenants paid the monthly rent late.
4. For the period from March 2022 to February 2023, the Tenants on 12 occasions failed to pay the rent in full on the 1st day of the month. Therefore, I find that the Tenants have persistently failed to pay the rent on the date it was due.

Damage

5. On February 12, 2023, the Landlord served the Tenants with a Notice to End your Tenancy for Interfering with Others, Damage or Overcrowding (N5) with a termination date of April 30, 2023. The Landlord alleged in the notice that the Tenants, another occupant of the rental unit or a person whom the Tenants permitted in the residential complex wilfully or negligently caused undue damage to the rental unit or residential complex.
6. Section 64(3) of the Residential Tenancies Act, 2006 ('the Act') provides that the first N5 is voided if the Tenant, within seven days after receiving the notice, stops the conduct or activity or corrects the omission complained about. In this case, the N5 was served on February 12, 2023, which means that the 7-day voiding period ran from February 13, 2023 to February 19, 2023. The Tenants did not void the N5 notice by paying the cost to repair or replace the damaged unit.
7. The Landlord testified that on August 29, 2022, she attended the two-bedroom townhouse unit and found the rental unit in a state of disrepair. The unit was a new construction when the tenancy commenced in May 2020 and the pictures from either March or April 2020 showed the unit in good condition.
8. The Landlord presented pictures of the unit showing markings on the wall in several areas, holes in the wall, and mildew like stains on the carpets in both bedrooms. The Landlord hired a contractor who assessed the costs to repair or replace the damage at \$7,910.00 in an invoice dated September 20, 2023.

Relief from Eviction

9. Section 64 (1) of the Act states that a Landlord may give a Tenant notice of termination of the tenancy if the conduct of the Tenant, another occupant of the rental unit or a person permitted in the residential complex by the Tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the Landlord or another Tenant or substantially interferes with another lawful right, privilege or interest of the Landlord or another Tenant.
10. Based on all the evidence, I am satisfied that the Tenants have substantially interfered with the lawful right, privilege, or interest of the Landlord wilfully or negligently caused undue damage to the rental unit. The pictures taken by the Landlord before the tenancy began in 2020 shows the unit in a good condition which means that the Tenants or their guests or occupants must be responsible for the damage evidenced by the Landlord's oral testimony,

and the pictures submitted into evidence. I find it fair to rely upon the estimate submitted by the Landlord and the Tenants will be ordered to pay \$7,910.00 to the Landlord.

11. I have considered all 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 Tenants is terminated. The Tenants must move out of the rental unit on or before June 19, 2023.
2. If the unit is not vacated on or before June 19, 2023, then starting June 20, 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 June 20, 2023.
4. The Tenants shall also pay the Landlord compensation of \$75.62 per day for the use of the unit starting June 20, 2023 until the date the Tenants move out of the unit.
5. The Tenants shall pay to the Landlord \$7,910.00, which represents the reasonable costs of repairing or replacing the damaged property.
6. The Tenants shall also pay to the Landlord \$186.00 for the cost of filing the application.
7. If the Tenants do not pay the Landlord the full amount owing on or before June 19, 2023, the Tenants will start to owe interest. This will be simple interest calculated from June 20, 2023 at 6.00% annually on the balance outstanding.

June 8, 2023
Date Issued

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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 20, 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.