



## **Order under Section 69 and 89 Residential Tenancies Act, 2006**

**Citation:** Victoria Park Community Homes v Bradley, 2023 ONLTB 32361

**Date:** 2023-06-02

**File Number:** LTB-L-023389-22

**In the matter of:** 1010, 1 HAMILTON ST S WATERDOWN  
ON L8B1A6

**Between:** Victoria Park Community Homes Landlord

**And**

April Bradley Tenant

Victoria Park Community Homes (the 'Landlord') applied for an order to terminate the tenancy and evict April Bradley (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes ('L1 application').

The Landlord also applied for an order to terminate the tenancy and evict the Tenant because the Tenant has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant and because the Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has wilfully or negligently caused undue damage to the rental unit or residential complex. ('L2 application').

The Landlord also applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred 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 March 21, 2023 and reconvened on May 26, 2023.

Only the Landlord's Representative Karolina Aguiar attended both hearing dates.

The Tenant was not present or represented at either hearing date although properly served with notice of the hearings by the LTB. There was no record of a request to adjourn either hearing date. As a result, the matter proceeded with only the Landlord's evidence.

**Determinations:**

L1 Application

1. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$1,121.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$36.85. This amount is calculated as follows: \$1,121.00 x 12, divided by 365 days.
5. The Tenant has paid \$7,030.00 to the Landlord since the application was filed.
6. The rent arrears owing to May 31, 2023 are \$10,893.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$419.83 from the Tenant and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
9. Interest on the rent deposit, in the amount of \$4.20 is owing to the Tenant for the period from January 1, 2023 to May 26, 2023.

L2 Application

1. On April 12, 2022, the Landlord gave the Tenant an N5 notice of termination deemed served on April 17, 2022. The first claim on the N5 notice alleges that the Tenant substantially interfered with the Landlord's lawful right, privilege, or interest, by failing to pay two invoices. Both of those invoices relate to an incident on May 20, 2021 in which the lithium battery stored on the Tenant's balcony ignited and caused a fire.
2. The first invoice is for the cost of the fire department removing the car battery from the Tenant's unit. That invoice is for \$4,898.58. The second invoice is for removal of the garbage relating to the car battery fire. This invoice is for \$141.25.
3. The Tenant did not pay the invoices within seven days after receiving the N5 notice of termination. Therefore, the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).
4. The Landlord submitted that the Landlord could not wait for the Tenant to dispose of the car battery because it posed an immediate safety hazard and had to be disposed of by the fire department.

5. Based upon the uncontested evidence of the Landlord I am satisfied on a balance of probabilities that the Tenant's failure to pay the two invoices has substantially interfered with the Landlord's lawful rights, privileges, or interests. This is because the Landlord had no choice but to incur a significant cost as the compromised battery posed an immediate safety hazard. The Tenant's failure to pay the cost when the battery was stored on their balcony substantially interferes with the Landlord because the Landlord was forced to pay for the battery's removal.
6. The second claim on the Landlord's N5 notice is that the Tenant or someone living with Tenant wilfully or negligently damaged the rental unit or the residential complex. While I am satisfied that the Tenant was negligent to store a car battery on their balcony the Landlord led no evidence that the resulting fire damaged the rental unit or the residential complex. The Landlord's Representative submitted that the fire caused damage to the balcony but there were no photographs of the damage, estimates to fix the damage, or any invoices. The battery itself was destroyed and it was costly to remove but the Landlord led insufficient evidence to establish that there was any damage to the rental unit or residential complex. As such the second claim on the Landlord's N5 notice is dismissed.
7. The Landlord also claimed compensation for the damage caused by the fire in the amount of the unpaid invoices for removal and clean up from the car battery fire. However, those invoices are not for damage they are for removal. Additionally, as the Landlord did not prove that there was damage to the rental unit or rental complex resulting from the fire, the claim for compensation for damages is also dismissed.

#### Relief From Eviction

8. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including that the Landlord informed the Tenant about the possibility of a repayment plan, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. Additionally, the Tenant did not attend the hearing to provide any evidence relevant to my analysis.

#### **It is ordered that:**

1. Pursuant to the L2 Application, the tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before June 13, 2023.
2. Pursuant to the L1 Application, the Tenant shall pay to the Landlord \$10,492.07. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
3. The Tenant shall also pay the Landlord compensation of \$36.85 per day for the use of the unit starting May 27, 2023 until the date the Tenant moves out of the unit.

4. If the Tenant does not pay the Landlord the full amount owing on or before June 13, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 14, 2023 at 6.00% annually on the balance outstanding.
5. If the unit is not vacated on or before June 13, 2023, then starting June 14, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. 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 14, 2023.

**June 2, 2023**

**Date Issued**

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Amanda Kovats

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 expires on December 14, 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.

**Schedule 1  
SUMMARY OF CALCULATIONS**

**A. Amount the Tenant must pay as the tenancy is terminated**

Rent Owing To Hearing Date	\$17,760.10
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$7,030.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$419.83
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$4.20
<b>Total amount owing to the Landlord</b>	<b>\$10,492.07</b>
Plus daily compensation owing for each day of occupation starting May 27, 2023	\$36.85 (per day)

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