



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

**Citation:** Living v Kmieck, 2023 ONLTB 34510

**Date:** 2023-05-03

**File Number:** LTB-L-055982-22

**In the matter of:** 2-4, 43 CLEVELAND ST THOROLD  
ON L2V3K5

**Between:** Skrtich Living Landlord

**And**

Steve Kmieck Tenant

Skrtich Living (the 'Landlord') applied for an order to terminate the tenancy and evict Steve Kmieck (the 'Tenant') 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; and wilfully or negligently caused damage to the premises.

This application was heard by videoconference on April 25, 2023. Only the Landlord's Agents, B. Roger, and J. Zeleny, attended the hearing. As of 9:57 a.m., 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. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for damages in the application. Therefore, the tenancy is terminated and the Tenant will be ordered to pay the repair cost.
2. On August 31, 2022, the Landlord gave the Tenant the first, voidable N5 pursuant to section 64 of Residential Tenancies Act, 2006 (Act) with a termination date of September 21, 2022. The Landlord alleged in the notice that following multiple complaints about noise disturbance from the unit, the Landlord attended the unit on August 29, 2022 and observed the Tenant

or someone permitted by the Tenant damaged the doors to three vacant units. The Landlord requested an order for the Tenant to pay the \$3,553.85 cost to replace the doors.

3. The Landlord's Agent stated that the rental unit is in a rooming house and the Tenant's area of the house contains four units, three of which were vacant. On August 29, 2022, they observed that the doors of the three units were damaged beyond repair.
4. The Landlord provided a work order dated August 29, 2022, detailing the work required to be done and the cost. An invoice dated September 7, 2022, showed the cost as \$3,553.85.

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5. Since the service of the notice of termination, the noise disturbances have continued and led to police attendance in the residential complex on October 6, 2022, November 6, 2022, November 14, 2022, and January 27, 2023.

#### Analysis

6. Section 64(3) of 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 7-day voiding period ran from September 1, 2022 to September 6, 2022. The Tenant did not void the N5 notice of termination as the payment was not made.
7. I am satisfied on a balance of probabilities that the Tenant wilfully or negligently caused damage to the vacant unit doors. The Tenant's failure to report the damage to the Landlord leads me to the conclusion that the Tenant or their guests must be responsible for the damage and I find it fair to rely on the estimate prepared for and submitted by the Landlord.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. There is no last month's rent deposit.
10. 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 Tenant is terminated. The Tenant must move out of the rental unit on or before May 19, 2023.

2. If the unit is not vacated on or before May 19, 2023, then starting May 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 May 20, 2023.
4. The Tenant shall pay to the Landlord, \$3,553.85 for the damage caused to the doors.
5. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
6. The total amount the Tenant owes the Landlord is \$3,739.85.
7. If the Tenant does not pay the Landlord the full amount owing on or before May 19, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 20, 2023 at 6.00% annually on the balance outstanding.

**May 3, 2023**

**Date Issued**

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Member, Landlord and Tenant Board

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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 November 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.

