



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

**Citation:** Le ber v Wright, 2023 ONLTB 30002

**Date:** 2023-04-11

**File Number:** LTB-L-002593-23

**In the matter of:** A, 163 COLLIER ST  
BARRIE ON L4M1H6

**Between:** Beverly Le ber Landlord  
Kelly Le ber

**And**

Frederick Wright Tenant

Beverly Le ber and Kelly Le ber (the 'Landlord') applied for an order to terminate the tenancy and evict Frederick Wright (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully caused undue damage to the premises.

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

This application was heard by videoconference on March 20, 2023.

Only the Landlord and their representative Christina De Palma (CD) attended the hearing.

As of 1:27 pm, 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.

The Landlord's representative said the Tenant was served with disclosure on March 13, 2023 which included the Notice of Hearing. In addition, CD said she communicated with the Tenant's mother about the hearing.

**Determinations and Reasons:**

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.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The rental unit is a one bedroom apartment in and semi detached complex.
4. The tenancy began around February 1, 2019.
5. The Landlord's disclosure included photographs, emails, texts and video footage.
6. Although this order does not specifically address each piece of evidence individually or reference all of the testimony, I have considered all of the evidence and oral testimony when making my determinations.

N7 Notice of Termination – Serious Impairment of Safety and Wilful Damage

7. On January 9, 2023, the Landlord gave the Tenant an N7 notice of termination alleging that:
  - Around December 28, 2022 the Tenant threw a car tire off of the second-story back deck of his rental unit into the parking lot below, hitting the car belonging to another tenant.
  - Around January 2, 2023, the Tenant threw a glass object off the same balcony which resulted in broken glass in the driveway and a risk to the other tenants
  - Around December 31, 2022 and January 4, 2023, the Landlord attended the rental unit for maintenance and noted the hole in the bedroom wall and damage to the bathroom door which the Tenant admitted to punching. The toilet was clogged with full rolls of toilet paper, causing excessive levels of water and human waste which the Landlord had to shovel out. The sink was also clogged with broken glass and cigarette butts. During the visit, the Tenant became aggressive, the Landlord was fearful, left without having completed all of the necessary repairs and called the Police.
  - Around January 4, 2023 the Landlord received a complain from another tenant about breaking glass sound from the Tenant's unit. The Landlord investigated and found the Tenant had broken the glass at the back door with a shovel, attempting to gain entry into his unit as he did not have his keys.
  - The Landlord alleges that the Tenant smokes in the rental unit, which is a serious impairment to the safety of the other tenants
  - The Landlord also asserts that from December 2, 2022 to January 4, 2023, the Tenant and his girlfriend engage in yelling and screaming at all hours and the tenants fear for their safety due to the domestic altercations which resulted in Police presence.

8. The Landlord testified that on two occasions; the Tenant threw dangerous items from his balcony which is on the second floor. He said that when the Tenant threw the heavy large tire from his balcony, it struck another tenant's car below, causing damage that was not rectified by the Tenant. The Landlord asserts that this seriously impaired the safety of others as the driveway (below the Tenant's balcony) is used by the other tenants and it could have struck someone and caused serious bodily harm. Likewise, when the Tenant threw the glass object from his balcony, he could have also seriously injured someone at the residential complex.
9. It was the position of the Landlord that the Tenant admitted to causing damage to the bedroom wall and bathroom door, stating that he did it when he was in a "fit of rage".
10. As for the toilet and sink, the Landlord testified that the Tenant, by flushing full rolls of toilet paper caused excessive water and human waste that he had to shovel from the toilet and the Tenant ought to have know that by doing this, he would cause damage. Also, he said when the Tenant broke glass in the sink and put cigarettes in the sink, he caused more clogging that was not fixed as the Landlord left the rental unit in fear when the Tenant became aggressive and argumentative.
11. The landlord takes the position that the Tenant wilfully caused damage to the rental unit when he forgot his key and broke the glass in the door to gain entry. He did not attempt to find alternative keys from the Landlord.
12. At the hearing, I advised the Landlord that, as per testimony, I was not sufficiently persuaded that when the Tenant smokes in the rental unit, other tenants suffered a serious impairment of safety.
13. Additionally, I was not sufficiently persuaded based on the evidence before the Board that the domestic incidents as alleged in the N7 notice rise to the level required when service this type of notice and the Landlord did not make out this ground as a serious impairment to safety for others at the residential complex.

#### Analysis

14. Subsection 66(1) of the Act states:

- 66 (1) A landlord may give a tenant notice of termination of the tenancy if,
- (a) an act or omission of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant seriously impairs or has seriously impaired the safety of any person; and
  - (b) the act or omission occurs in the residential complex.

15. Subsection 63(1) of the Act states:

Despite section 62, a landlord may give a tenant notice of termination of the tenancy that provides a termination date not earlier than the 10th day after the notice is given if the

tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex,

(a) wilfully causes undue damage to the rental unit or the residential complex;

16. As explained to the parties, an N7 notice of termination is for short notice termination, with no opportunity for the Tenant to rectify the issues. This type of application is given priority eviction by the Sheriff. I believe the legislature intended to reserve this application for the most serious of situations. Examples of a serious impairment of safety would be situations involving firearms, assaults or fires. I also explained that there are other grounds for termination available for less serious conduct.
17. In order to be successful on this ground, the Landlord must establish that the effect of the Tenant's actions threatens or has threatened the well-being or physical integrity of another person to such a degree that termination of the tenancy is reasonable in order to ensure the safety of others.
18. In *Furr v. Courtland Mews Cooperative Housing Inc.*, 2020 ONSC 1175, the Courts find at paragraph 17:

[17] ...In 2276761 Ontario Inc. v. Overall, 2018 ONSC 3264, the Divisional Court made it clear that serious impairment of safety includes both actual impairment and a real risk of impairment. In other cases, the Board has held that it is not necessary that anyone has actually been hurt or injured and that a serious impairment of safety may include:

- (i) the potential for an outcome that has the risk of a substantial negative effect on a person's well-being;
- (ii) a foreseeable act or omission that could result in or may result in a serious impairment to safety; and
- (iii) extremely loud and intense arguments could easily result in violence and would be a safety hazard.

19. Although this decision relates to non-profit housing co-operatives, it applies by analogy between the Landlord and Tenant in this case and is consistent with other landlord and tenant cases on point.
20. Based on the evidence before the Board and on a balance of probabilities, I am satisfied that the Tenant knew or ought to have known that throwing items from a second-storey balcony to the ground below, had the potential to cause serious harm to others. By throwing a large tire and a glass object from his balcony, the Tenant could have caused serious bodily harm by this reckless behaviour.

21. As for the wilful damage claim, the distinguishing feature is that negligent damage occurs where a tenant takes some action which the tenant should reasonably have concluded would result in damage or alternately, in which a tenant fails to take a required action which the tenant should reasonably have known would result in damage. By contrast, wilful damage results from action taken by the tenant with the intent to do damage.
22. The question before me is whether the Tenant intended to cause damage to the unit.
23. I find the Tenant wilfully caused undue damage to the rental unit as described above. In making this finding, I considered the uncontested evidence of the Landlord with respect to the damage to the car, wall and bathroom door and entry door. I also find that the Tenant wilfully flushed entire rolls of toilet paper causing excessive water and waste to accumulate which required the Landlord to shovel out the toilet. The Tenant clogged both the toilet and the sink with glass and cigarette butts which the Tenant knew or ought to have known would lead to significant maintenance issue. I find that the damage caused was wilful and undue – meaning it goes well beyond what would be considered “normal wear and tear”.
24. In this case, the Landlord says that due to the Tenant’s aggressive and argumentative behaviour, he has not been able to return to the unit to complete the repairs to the sink and is concerned about the consequences of this left incomplete in terms of additional maintenance issues and his obligations under the Act. I am satisfied that the Landlord has met the burden of proof to establish that the Tenant has wilfully caused damage to the rental unit and residential complex pursuant to s.63(1)(a) of the Act.

Daily compensation, NSF charges, rent deposit

25. The Tenant was required to pay the Landlord \$2,021.92 in daily compensation for use and occupation of the rental unit for the period from January 20, 2023 to March 20, 2023.
26. Based on the Monthly rent, the daily compensation is \$33.70. This amount is calculated as follows: \$1,025.00 x 12, divided by 365 days.
27. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
28. The Landlord collected a rent deposit of \$1,025.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit is owing to the Tenant for the period from February 1, 2019.
29. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the ‘Act’) the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

Relief from Eviction

30. The Tenant was not present to provide any evidence regarding his circumstances. The Landlord testified that they are not aware of any circumstances of the Tenant to warrant a

finding that it would be unfair to deny relief from eviction pursuant to subsection 83(1) of the Act.

31. 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.
32. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

**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 April 30, 2023.
2. If the unit is not vacated on or before April 30, 2023, then starting May 1, 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 1, 2023. The Sherriff is requested to expedite the enforcement of this order.
4. The Tenant shall pay to the Landlord \$996.92, which represents compensation for the use of the unit from January 20, 2023 to March 20, 2023, less the rent deposit and interest the Landlord owes on the rent deposit.
5. The Tenant shall also pay the Landlord compensation of \$33.70 per day for the use of the unit starting March 21, 2023 until the date the Tenant moves out of the unit.
6. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
7. As of the date of the hearing, the amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the amount the Landlord is entitled to by \$(839.00).
8. However, the Landlord is authorized to deduct from amount owing to the Tenant \$33.70 per day for compensation for the use of the unit starting March 21, 2023 to the date the Tenant moves out of the unit.
9. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

**April 11, 2023**

**Date Issued**

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Dana Wren

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 November 1, 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.