



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

Citation: Ray v Gilliard, 2023 ONLTB 23958

Date: 2023-03-07

File Number: LTB-L-023424-22

In the matter of: 1359 MARTINDALE ST
WINDSOR ON N9B1G3

Between: Charrie Kay Ray and Kaushik Ray

Landlord

And

Danielle Gilliard

Tenant

Charrie Kay Ray and Kaushik Ray (the 'Landlord') applied for an order to terminate the tenancy and evict Danielle Gilliard (the 'Tenant') because:

- the Tenant did not pay the rent that the Tenant owes.
- 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.
- the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

This application was heard by videoconference on January 12, 2023.

Only the Landlord, C. Kay Ray and the Landlord's Legal representative, J. Nieuwhof attended the hearing.

As of 10:12 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.

The Landlord requested to withdraw the portion of the L2 application that was based on the N12 notice of termination.

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 \$1,821.60. It is due on the first day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$59.89. This amount is calculated as follows: \$1,821.60 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to January 31, 2023 are \$17,925.68.
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 \$1,800.00 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 \$32.57 is owing to the Tenant for the period from October 16, 2020 to January 12, 2023.

L2 Application

10. On April 6, 2022, the Landlord gave the Tenant an N5 notice of termination. The notice of termination contains the following allegations:
 - March 31, 2022- the Tenant damaged the custom fitted door and disposed of it outside. The Tenant has also dumped a large amount of miscellaneous waste throughout the exterior of the property and in front of the garage.
11. The Landlord testified that on March 31, 2022, she drove over to the unit and noticed that the Tenant had dumped a lot of stuff in front of the garage, including a custom fitted door.
12. The Landlord submitted photos depicting the state of the outside of the unit that shows miscellaneous waste throughout the exterior of the property as well as the door disposed of outside in front of the garage.
13. The Landlord testified that the exterior was cleaned within the voiding period, however the Tenant did not pay the amount requested on the N5 notice of termination with respect to the door.
14. The portion of the N5 related to the substantial interference has been voided, however the portion related to the payment for undue damage caused either wilfully or negligently has not, however, the

evidence as it relates to the cost of the door shows that it would cost \$167.40, not the \$500.00 the landlord indicated in the N5 notice of termination.

15. I find that the portion of the N5 that relates to damage is invalid, as what was indicated on the N5 notice of termination as the cost to replace the door is significantly more than what the actual cost was, as submitted by the Landlord at the hearing, namely 2 Home Depot receipts totalling \$167.40, therefore the portion of the L2 application that relates to the N5 notice is dismissed.

Section 89 Damage Claim

16. The Landlord is requesting \$500.00 for the cost to replace the door that was disposed of by the Tenant.
17. The Landlord submitted 2 receipts totalling \$167.40, related to the door. As already discussed above, the Landlord submitted pictures that show a door laying outside among a pile of garbage in front of the garage at the residential complex.
18. An order for \$167.40 for the cost of the door shall be issued.
19. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Residential Tenancies Act, 2006 (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The Tenant did not attend the hearing to provide submission regarding her circumstances or to contest the Landlord's application.

It is ordered that:

L1 Application

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:
 - \$21,754.88 if the payment is made on or before March 18, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after March 18, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
4. If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before March 18, 2023
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$15,176.19. 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.

6. The Tenant shall also pay the Landlord compensation of \$59.89 per day for the use of the unit starting January 13, 2023 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlord the full amount owing on or before March 18, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 19, 2023 at 5.00% annually on the balance outstanding.
8. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
9. If the unit is not vacated on or before March 18, 2023, then starting March 19, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. 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 March 19, 2023.

L2 Application

11. The Tenant shall pay to the Landlord \$167.40 for the cost of replacing the door.
12. If the Tenant does not pay the Landlord the full amount owing on or before March 18, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 19, 2023 at 5.00% annually on the balance outstanding.

March 7, 2023

Date Issued

Emily Robb

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 September 19, 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 to void the eviction order and continue the tenancy if the payment is made on or before March 18, 2023

Rent Owing To March 31, 2023	\$21,568.88
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$21,754.88

B. Amount the Tenant must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$16,822.76
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$1,800.00
Less the amount of the interest on the last month's rent deposit	- \$32.57
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$15,176.19
Plus daily compensation owing for each day of occupation starting January 13, 2023	\$59.89 (per day)