



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

Citation: Wallace v Thomas, 2023 ONLTB 22020

Date: 2023-03-02

File Number: LTB-L-012828-22

In the matter of: A, 346 DIVISION ST
Cobourg ON K9A3R6

Between: Robert Wallace Landlord

And

Dawn Dowle
Shawn Thomas Tenants

L2 APPLICATION:

Robert Wallace (the 'Landlord') applied for an order to terminate the tenancy and evict Dawn Dowle and Shawn Thomas (the 'Tenants') because:

- the Tenants, another occupant of the rental unit or a person the Tenants permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex;
- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully caused undue damage to the premises;
- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex used the rental unit or the residential complex in a manner that is inconsistent with use as a residential premises and that has caused or can be expected to cause significant damage.

The Landlord applied for an order requiring the Tenants to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenants' conduct or that of another occupant of the rental unit or someone the Tenants permitted in the residential complex. This conduct substantially interfered with the Landlord's reasonable enjoyment of the residential complex or another lawful right, privilege or interest.

L1 APPLICATION:

The Landlord also applied for an order to terminate the tenancy and the Tenants because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on November 24, 2022. Only the Landlord attended the hearing.

The hearing was scheduled to start at 1:00pm. I waited until after 1:30 to call the matter, the Tenants were 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:

L1 APPLICATION:

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants 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. The Tenants were in possession of the rental unit on the date the application was filed.
3. The Tenants vacated the rental unit on June 15, 2022. Rent arrears are calculated up to the date the Tenants vacated the unit.
4. The lawful rent is \$. It was due on the 1st day of each month.
5. The Tenants have not made any payments since the application was filed.
6. The rent arrears owing to June 15, 2022 are \$9,338.35.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.

L2 APPLICATION:

9. As explained below, the Landlord has proven on a balance of probabilities the grounds for the application and the claim for compensation in the application. Therefore, the application is granted.
10. The Tenants were in possession of the rental unit on the date the application was filed.
11. The Landlord served the Tenants with an N7 notice of termination. However, as already mentioned as of the date of the hearing the Tenants had vacated the unit. Therefore, the Landlord's application for eviction is moot. As such, the duration of the hearing was regarding damages caused by the Tenants and the Landlord's reasonable out-of-pocket expenses.
12. The Landlord attended the unit on June 7, 2022, the Landlord stated that the unit had food waste in the fridge and in the unit, there was a bad odor emanating from the unit, garbage was left and old furniture that needed to be remove, there was animal feces throughout the unit, and debris within the furnace duct within the furnace duct work.
13. The Landlord testified that the Tenants caused over \$35,000.00 in damages to the rental unit. However, during the hearing, I canvassed the Landlord with respect to these damages. The Landlord relied on photographs showing the condition before the unit was rented and photographs showing the damages and invoices for the costs associated.
14. The kitchen, doors throughout the unit, floors, subfloors, damage to the walls throughout the unit, among other things needed to be repaired or replaced.

15. The purpose of the Act is to restore a landlord to the position they were in prior to the damages, not to award them a betterment. It was clear from the before and after photos of the rental unit that some of the renovations completed were upgrades (new backsplash and countertops in the kitchen, etc). The Landlord is not entitled to these upgraded costs.
16. Based on the uncontested evidence, I find that the Tenants have willfully or negligently caused undue damage. I also find that the Landlord has incurred reasonable out-of-pocket expenses of \$14,000.00. These expenses were incurred as a result of these damages.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated as of June 15, 2022, the date the Tenants moved out of the rental unit
2. The Tenants shall pay to the Landlord \$9,524.35. This amount includes rent arrears owing up to the date the Tenants moved out of the rental unit and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
3. The Tenants shall pay to the Landlord \$14,000.00, which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the substantial interference.
4. The total amount the Tenants owe the Landlord is \$186.00.
5. The total that the Tenants owe the Landlord is \$23,710.35.
6. If the Tenants do not pay the Landlord the full amount owing on or before March 13, 2023, the Tenants will start to owe interest. This will be simple interest calculated from March 14, 2023 at 5.00% annually on the balance outstanding.

March 2, 2023
Date Issued

Curtis Begg
Member, Landlord and Tenant Board

15 Grosvenor St, 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.

*Note: When the LTB directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice.

**Schedule 1
SUMMARY OF CALCULATIONS**

A. Amount the Tenants must pay as the tenancy is terminated

Rent Owing To Move Out Date	\$9,338.35
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$0.00
Less the amount of the interest on the last month's rent deposit	- \$0.00
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total amount owing to the Landlord	\$9,524.35