



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

Citation: Brad v Caruana, 2023 ONLTB 21948

Date: 2023-02-23

File Number: LTB-L-053348-22

In the matter of: 44-151 Bonaventure Drive
London, ON N5V 4M1

Between: Nyaculin Brad Landlord

And

Donna Lyn Caruana Tenants
Tyler Kelly

Nyaculin Brad (the 'Landlord') applied for an order to terminate the tenancy and evict Donna Lyn Caruana and Tyler Kelly (the 'Tenants') because the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully or negligently caused damage to the premises.

Further, the Landlord also applied for an order to terminate the tenancy and evict the Tenants because the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has willfully caused undue damage to the premises. Further, the Landlord applied for an order requiring the Tenants to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property.

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

This application was heard by videoconference on February 9, 2023.

Only the Landlord and the Landlord's Legal Representative Bob Fex attended the hearing.

As of 9:24 am, 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:

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. Therefore, the tenancy is terminated, and the Tenants are ordered to pay the Landlord compensation.
2. The Tenants were in possession of the rental unit on the date the application was filed.

N5 Notices

3. On September 6, 2022, the Landlord gave the Tenants an N5 notice of termination deemed served the same date. The notice of termination contains the follow allegations:
 - a) That on August 31, 2022, the Tenants had damaged the oven door located in the unit. The glass door had shattered, and the damage was not the result of normal ware and tear. The Landlord is requesting \$320.00 to repair the damage.
 - b) That on September 3, 2022, the Tenants did not permit the Landlord to enter the unit for an inspection despite having served the Tenants with a 24-Hours Notice of Entry. The Landlord was threatened.
 - c) On September 4, 2022, when the Landlord had inspected the oven and outlined that the Tenants were responsible for the damage, the Tenants berated the Landlord and threatened not to pay rent.
4. The Landlord entered into evidence photos of the oven door. The Landlord testified that the contractor he had retained to inspect the oven advised him that the door could be replaced at a cost of \$320.00. Evidence was entered showing that estimated cost.
5. The Landlord testified further that on September 3, 2022, after having served the Tenant's with a 24-Hours Notice of Entry, the Tenants denied the Landlord entry into the unit until September 4, 2022 when he inspected the unit and took photos of the oven. When the Landlord had explained to the Tenants that they would be liable for the damage, the Landlord testified that the Tenants and their guests yelled her.
6. The Tenants were served with the N5 notice of termination but refused to pay the requested amount for the damage to the oven door. As such, based on the Landlord's uncontested evidence I am satisfied on a balance of probabilities that the Tenants did not void the N5 notice of termination in accordance with s. 64(3) of the *Residential Tenancies Act, 2006* (the 'Act').
7. Despite this, the Landlord gave the Tenants a second N5 notice of termination on September 18, 2022 on the basis of a noise complaint the Landlord received on September 16, 2022. The Landlord was not required to serve the second N5 notice as the Tenants never voided the first N5 notice by paying for the damages. The Landlord filed the application for both notices on September 18, 2022.
8. On the basis of the Landlord's uncontested evidence, I am satisfied on a balance of probabilities that the Tenants willfully or negligently damaged the unit and will be ordered to pay the Landlord \$320.00 for the damages.

N7 Notice

9. On December 14, 2022, the Landlord gave the Tenants an N7 notice of termination deemed served that same date. The notice of termination contains the following allegations:
 - a) The Landlord inspected the unit on December 11, 2022 and found the following issues:
 - i) The unit smelled like weeds.

- ii) There was water leakage and plumbing issues
 - iii) The closet doors, bathrooms and vents were damaged
 - iv) Paint was removed from the stairs
 - v) There were stains all over the house
 - vi) Appliances were missing parts
 - vii) The driveway was covered with shattered glass
 - viii) Holes were punched in the drywall in the bedroom walls
10. The Landlord testified that after many delays on December 11, 2022, the Landlord was assisted by police and was able to conduct an inspection of the unit. Pictures of the damage were entered into evidence. The Landlord testified that the police recommended that she not go into the basement due to the extensive damage that was observed at the time.
 11. The Landlord testified that she had a contractor view the damage and that she received an estimate of \$10,000.00 in order to repair and/or replace the damages and damaged items in the unit. This estimate was created without the contractor having observed the unit's basement.
 12. Based on the Landlord's uncontested evidence, on a balance of probabilities I am satisfied that the Tenants willfully or negligently caused damage to the unit in accordance with s. 63 of the Act.
 13. Based on the photos of the damage provided and the estimate of the Landlord's contractor, I find the requested amount of \$10,000.00 to repair and/or replace the damages and damaged items in the unit to be reasonable and will be ordered.

Daily Compensation

14. The Tenants were required to pay the Landlord \$10,936.11 in daily compensation for use and occupation of the rental unit for the period from October 1, 2022 to February 9, 2023. The Landlord testified the Tenants did not pay rent for the months of October, November, December and February.
15. Based on the Monthly rent, the daily compensation is \$82.85. This amount is calculated as follows: \$2,520.00 x 12, divided by 365 days.
16. The Landlord collected a rent deposit of \$2,500.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$32.36 is owing to the Tenants for the period from August 5, 2022 to February 9, 2023 .
17. 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.

Section 83 Considerations

18. 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.

It is ordered that:

19. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before March 6, 2023.
20. If the unit is not vacated on or before March 6, 2023, then starting March 7, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
21. 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 7, 2023.
22. The Tenants shall pay to the Landlord \$8,403.75, which represents compensation for the use of the unit from October 1, 2022 to February 9, 2023, less the rent deposit and interest the Landlord owes on the rent deposit.
23. The Tenants shall also pay the Landlord compensation of \$82.85 per day for the use of the unit starting February 10, 2023 until the date the Tenants move out of the unit.
24. The Tenants shall also pay to the Landlord \$10,320.00, which represents the reasonable costs of repairing the damage and replacing the damaged property.
25. If the Tenants do not pay the Landlord the full amount owing on or before March 6, 2023, the Tenants will start to owe interest. This will be simple interest calculated from March 7, 2023 at 5.00% annually on the balance outstanding.

February 23, 2023

Date Issued

Jagger Benham

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 September 7, 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.

