



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

**Citation:** URISHA INVESTMENTS INC. v Oleynikova, 2023 ONLTB 20544

**Date:** 2023-02-22

**File Number:** LTB-L-073805-22

**File Number:** LTB-L-075983-22

2023 ONLTB 20544 (CanLII)

**In the matter of:** 64, 1574 BATHURST ST  
TORONTO ON M5P3H3

**Between:** URISHA INVESTMENTS INC. Landlord

**And**

Vera Oleynikova Tenant

URISHA INVESTMENTS INC. (the 'Landlord') applied for an order to terminate the tenancy and evict Vera Oleynikova (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;
- 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 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 (N5, N7, first L2 application).

URISHA INVESTMENTS INC. (the 'Landlord') applied for an order to terminate the tenancy and evict Vera Oleynikova (the 'Tenant') because:

- the Tenant or another occupant of the rental unit has committed an illegal act or has carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or 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 (N6, N7 second L2 application).

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

In each application, URISHA INVESTMENTS INC. (the 'Landlord')n also applied for an order

requiring Vera Oleynikova (the 'Tenant') 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 damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

These applications were heard by videoconference on February 7, 2023.

Only the Landlord's agent Shivannie Gornicz and the Landlord's representative Geoff Paine attended the hearing.

As of 9:19 am, 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 and Reasons:**

#### Introduction

1. These applications concern a rental unit that is a 1-bedroom apartment in a multi-unit complex and a tenancy agreement that began around July 2021.
2. The lawful monthly rent is \$1,518.00 and due on the 1<sup>st</sup> day of each month.
3. The Tenant was in possession of the rental unit on the date the application was filed.
4. 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 shall be terminated as detailed below.
5. The Landlord submitted as evidence a number of documents including photos, quotes and communications.
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.

### **THE LANDLORD'S FIRST L2 APPLICATION**

#### The Condition of the Rental Unit – N5 Notice of Termination

7. The N5 Notice of Termination (the "N5 Notice") describes the condition of the rental unit following an inspection conducted by the Landlord's staff on November 8, 2022. During the inspection, the Landlord's staff observed that the rental unit was in a state of extreme uncleanliness and clutter including excessive amounts of combustible materials, which constitute a fire hazard. The inspection also revealed extreme graffiti throughout the entire rental unit; including walls, doors, trim, ceiling, cabinetry and appliances, excessive water on the floor. There was also damage to the countertop caused by water damage and burn marks.

8. As a result, the Landlord obtained a quote from contractor ZGemi Building Beyond Buildings dated November 16, 2022 in the amount of \$10,904.50. The quote detailed repairs needed to the damage related to drywall, millwork, painting and plumbing caused by the actions of the Tenant.
9. Additionally, the N5 Notice addressed incidents on November 16, 2022 and November 17, 2022 where the Landlord received complaints from other tenants at the residential complex when the Tenant left garbage, debris, backpack, vacuum cleaner and combustibles in the common hallway at the residential complex.
10. At the hearing, the Landlord submitted photographs from the inspection. The evidence shows the rental unit is a state of extreme uncleanliness with graffiti throughout the unit. The photographs also show water on various parts of the floors in the unit.
11. The Landlord's agent also detailed the condition of the rental unit following 2 other inspections on November 29, 2022 and January 30, 2023 where the condition of the rental unit appeared to have worsened. Specifically, the appeared to be more graffiti, increased uncleanliness and clutter and damage. The Landlord submitted a photo of a broken toilet caused by the Tenant that occurred days prior to the hearing.
12. The Landlord's agent said the Tenant is aware of the Landlord's concerns with respect to the condition of the rental unit. The Landlord has attempted to address the issues with the Tenant and the Tenant has not corrected the behaviour. She also said the Tenant was made aware of the safety concerns with respect to the items left in the common hallway and the behaviour continued.
13. The Landlord's agent made the Tenant aware of the costs to remediate the damage in the rental unit and the Tenant did not pay to the Landlord the amount noted in the N5 Notice.
14. The Landlord takes the position that other tenants in the rental unit have complained on several occasions about the Tenant's behaviour of leaving items in the common area at the residential complex. Also, the condition of the Tenant's unit has caused subsequent damage to two other lower rental units and the damage and smell caused by the Tenant's behaviour has substantially interfered with their reasonable enjoyment at the residential complex.

*There was Substantial Interference and Damage at the Rental Unit*

15. Based on the Landlord's uncontested evidence, I am satisfied on a balance of probabilities that by maintaining the rental unit in a constant state of uncleanliness and clutter, the Tenant has substantially interfered with the reasonable enjoyment of the Landlord or another tenant and the behaviour of the Tenant caused significant damage in the rental unit. The Tenant has been made aware of the Landlord's concerns and has not corrected their behaviour; the condition of the rental unit continues to deteriorate and places the Landlord in a compromising position.
16. The Tenant has also substantially interfered with the Landlord's right and legal obligation to maintain the rental unit in accordance with section 20(1) of the Act. The state of the unit has made it impossible for the Landlord to carry out repairs to the ceiling and walls and floors. The photographs submitted reveal that these repairs are clearly necessary. The Landlord has arranged for contractors to attend the rental unit to do the required work but

the contractors have been unable to access the affected areas due to the clutter. The Landlord takes the position that the contractors have not been able to assess the floors due to extreme clutter to do an assessment of the damage. Additionally, the Landlord has not undertaken to commence repairs as the Tenant's behaviour continues so any efforts made by the Landlord would not be practical.

#### *The N5 Notice Was Not Voided*

17. According to section 64(3) of the Residential Tenancies Act, 2006 (the "Act"), the Tenant had seven days from the date the N5 Notice was served to correct her behaviour and void the notice. The Landlord served the N5 Notice on the on November 21, 2022. Accordingly, the voiding period ran from November 22, 2022 to November 28, 2022.
18. The Tenant did not void the N5 Notice. The Landlord inspected the unit on November 29, 2022 and January 30, 2023 after the voiding period. Photographs that were submitted from the inspections show that the condition of the rental unit had not changed and had in fact worsened. The Tenant did not compensate the Landlord for the damage caused as a result of her behaviour. As a result, the tenancy shall be terminated and an order will issue accordingly.

#### Serious Impairment of Safety – N7 Notice of Termination

19. N7 Notice of Termination (the "N7 Notice") describes an event that occurred on November 29, 2022 where the fire department attended to the rental unit after the Tenant started a fire in her unit when she burned garbage inside the unit. Following the incident, the Tenant was seen erratically running from the residential complex.
20. Section 66 of the Act allows a landlord to give a notice of termination if an act or omission in the residential complex seriously impairs or has seriously impaired the safety of any person.
21. The Landlord's agent said that following the incident she attempted to discuss this with the Tenant but did not have success with communicating with the Tenant.
22. The Landlord's agent testified that although no charges were laid, the Tenant's erratic behaviour when she burned garbage in the rental unit was reckless and placed the other tenants in an unsafe condition.
23. 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.
24. Based on uncontested evidence presented by the Landlord, I am satisfied that the behaviour of the Tenant has seriously impaired the safety of others at the residential complex. The Tenant ought to have known that by burning garbage in the rental unit, could cause a fire that would place the other tenant's safety in jeopardy.
25. In light of the Tenant's conduct, there is no reason the tenancy should continue. An order will issue accordingly.

### The First Damage Claim

26. The final claim in the application is made by way of s.89(1) of *the Residential Tenancies Act, 2006* (the 'Act'). That provision reads as follows:

A landlord may apply to the Board for an order requiring a tenant to pay reasonable costs that the landlord has incurred or will incur **for the repair of or, where repairing is not reasonable, the replacement of damaged property**, if the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex wilfully or negligently causes undue damage to the rental unit or the residential complex and the tenant is in possession of the rental unit.

27. This application claims an amount of \$10,904.50 under s.89(1) of the Act with allegations of damage related to; extreme graffiti throughout the rental unit to walls, doors, ceiling and kitchen cabinetry and damage to counter tops from water damage and burn marks.
28. The quote from the contractor dated November 16, 2022 details the scope of work involved to bring the unit to reasonable standard.
29. The photographs submitted by the Landlord support the proposition that the Tenant's behaviour has caused substantial damage within the unit.
30. The Landlord's agent testified that the graffiti is from an oil-based product that could not be removed. The contractor was not able to remove the paint and would have to replaster the unit and replace the millwork.
31. With respect to the countertop, due to the water damage caused by saturation, the counter top and a result the sink and associated plumbing will be replace using similar products with no upgrades.

### *Damage Claim - Analysis*

32. In order for an application for compensation for damages made pursuant to subsection 89 of the Act to succeed, a landlord must establish the following:
- a) There was property damage to the rental unit or residential complex;
  - b) The damage is "undue" meaning that it is not normal wear and tear and it is not insignificant; and
  - c) The damage was a result of wilful or negligent conduct by the Tenant, occupant or guest.
33. If all of these factors are met, then the Board can award the Landlord's the reasonable cost of repair, or the replacement cost if it is not reasonable for the damage to be repaired.
34. Section 89 is clear and a plain language reading of the section establishes that the Tenant must have wilfully or negligently caused the damage. For anything other than physical damage to property, a landlord must seek damages in a court of competent jurisdiction.
35. Based on the evidence before the Board and on all balance of probabilities, I am satisfied that the work contemplated by the Landlord is a result of the Tenant's behaviour when she

painted the unit with extreme graffiti and left water on the counter top which resulted in saturation and damage that required new fixtures.

36. The Tenant did not attend the hearing to defend her position.
37. Given all of the above and my knowledge of similar cases before the Board, I was satisfied that the Landlord has incurred or will incur costs of \$10,904.50 to repair or replace the damaged property. An order will issue accordingly.

## **THE LANDLORD'S SECOND L2 APPLICATION**

### The Illegal Act – N6 Notice of Termination

### Wilful Damage – N7 Notice of Termination

38. The Landlord's second L2 application is predicated on a N6 notice of termination and a N7 notice of termination, both served on December 8, 2022 and contain the same details.

### *Illegal Act*

39. The Landlord alleges that on December 8, 2022, the Tenant poured large quantities of water on the floors in the rental unit which caused water to flood into 2 units below the Tenant and damages resulted from the Tenant's behaviour.
40. The Landlord's agent testified that the Tenant has a history of leaving water on the floors in the unit and on this occasion the water so of such a quantity that it ran through the ceiling and walls to the unit below and even the unit below it; 2 floors below the Tenant.
41. The Landlord's agent said an emergency inspection was conducted and the Tenant's unit had substantial water on the floors including the bedroom and kitchen area. The Tenant advised the Landlord's agent that she was cleaning the floors.
42. The Landlord presented several photographs to support their position. The photographs show damage to rental unit as well as water damage to the 2 units below; specifically, the ceiling, walls and closet doors.
43. The Landlord's agent presented a copy of the repair quote provided by ZGemi dated January 17, 2023 in the amount of \$3,508.65. She said that remediation has not begun as the Tenant continues to pour excessive water on the floors in her unit which continues to flood the lower units.
44. The Landlord's agent also said the tenants affected by the flooding in the lower units have submitted several complaints to the Landlord about the smell and unsanitary condition of the units caused by the water seepage.
45. Based on the uncontested evidence before me, I am satisfied the Tenant has committed an illegal act in the residential complex, specifically pouring excessive water on the unit floors which flood 2 lower units. This act of mischief under section 430(1) of the Criminal Code (R.S.C., 1985, c. C-46) has caused damage to the residential complex and has interfered with the other tenants' enjoyment of the rental unit.

### *Wilful Damage*

46. The Landlord further alleges that the behaviour of the Tenant on December 8, 2022 constitutes wilful damage as the Tenant ought to have known that intentionally pouring excessive water on the floor would have resulted in flooding and damage. Despite previous attempts by the Landlord to address this behaviour, the Tenant continues to pour water on the floor which resulted in further damage to her unit and the units below.
47. According to s.63(1) of the Act:

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

48. 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.
49. The question before me is whether the Tenant intended to cause damage to the unit.
50. I find the Tenant willfully caused undue damage to the rental unit as described above. In making this finding, I considered the uncontested evidence of the Landlord's Agent with respect to the damage caused to the rental unit as a result of a flood that occurred in the units when the Tenant continued to pour excessive amounts of water on the floor in her unit despite repeated communication from the Landlord. The Landlord Agent's uncontested evidence supports a finding that the damage caused was wilful on the part of the Tenant. I also find that the damage is undue – it goes well beyond what would be considered "normal wear and tear."

### The Second Damage Claim

51. On the date of the hearing, the Landlord requested to amend the L2 application to include a revised claim for damage. The Landlord served the Tenant with the L2 amendment on January 26, 2023 and filed a Certificate of Service with the Board. The request to amend includes damage in the amount of \$3,508.65 a difference of \$1,008.65 from the original application. As the Tenant was put on notice in advance of the hearing and did not attend the hearing to defend their position, the Board granted the Landlord's request to amend to include the revised damage claim.
52. The requirements for a claim such as this have been detailed above in this order.
53. The Landlord's agent testified and submitted documentary evidence to support the proposition that when the Tenant continues to pour excessive water on the floor, it not only caused damage to her unit but to unit 55 and unit 46 directly below. The flooding has

resulted in damage to the closet doors in unit 46 which had become saturated and could not slide on the track. The closet doors could not be repaired and need replacement. Plaster repair is required in both lower units to the ceiling and walls where the flooding has affected the bathroom, bedroom and common areas.

54. The contractor's invoice in the amount of \$3,508.65 clearly details the scope of work required as a result of the flooding.
55. The Landlord said that remediation has not commenced as the Tenant has not corrected the behaviour and continues to pour water on the floor, causing flooding.
56. The Landlord's agent said that no insurance claim has been made against this Tenant.
57. Based on the evidence before the Board and on a balance of probabilities, I find that the Tenant has caused damage to the rental unit when she pours excessive water on the floor causing flooding in the lower unit. I also find that the Tenant has made no effort to correct this behaviour which places the Landlord in a compromising position with respect to their maintenance obligations under s.20(1) of the Act.

#### Relief from Eviction

58. I turned my mind to the circumstances of the Tenant. The Landlord's agent said the Tenant is approximately mid 30's and lives alone in the rental unit. She has no knowledge of the Tenant's financial or medical circumstances.
59. I do not find that a condition order is warranted in this case. The Tenant has been made aware of the Landlord's concern when served the various notices and communication attempts by the Landlord. The Tenant's behaviour with respect to the uncleanliness of the rental unit, pouring excessive water on the floor causing flooding and continues damage to the rental unit is ongoing. As a result, the Landlord cannot attend to the damage remediation until the tenancy is terminated.
60. 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.

#### Daily compensation and rent deposit

61. The Tenant was required to pay the Landlord \$2,595.16 in daily compensation for use and occupation of the rental unit for the period from December 18, 2022 to February 7, 2023.
62. Based on the Monthly rent, the daily compensation is \$49.91. This amount is calculated as follows: \$1,518.00 x 12, divided by 365 days.
63. The Landlord incurred costs of \$372.00 for filing the applications and is entitled to reimbursement of those costs.
64. The Landlord collected a rent deposit of \$1,500.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit is owing to the Tenant.
65. 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.



66. 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 February 27, 2023.
2. If the unit is not vacated on or before February 27, 2023, then starting February 28, 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 February 28, 2023. **The Sheriff is requested to expedite the enforcement of this order.**
4. The Tenant shall pay the Landlord compensation of \$49.91 per day for the use of the unit starting February 8, 2023 until the date the Tenant moves out of the unit.
5. The Tenant shall pay to the Landlord \$10,904.50, which represents the reasonable costs of replacing the damaged property for the Landlord's first L2 application.
6. The Tenant shall also pay to the Landlord \$3,508.65 which represents the reasonable costs of replacing the damaged property for the Landlord's second L2 application.
7. The Tenant shall also pay to the Landlord \$372.00 for the cost of filing the applications.
8. If the Tenant does not pay the Landlord the full amount owing on or before February 27, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 28, 2023 at 5.00% annually on the balance outstanding.

**February 22, 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 August 31, 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.