



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

Citation: Merritt St. Apartments Inc. v Milne, 2023 ONLTB 20730

Date: 2023-02-21

File Number: LTB-L-014544-22

In the matter of: B, 352 MERRITT ST
ST CATHARINES ON L2T1K8

Between: Merritt St. Apartments Inc. Landlord

And

Chase David Milne Tenant

Merritt St. Apartments Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Chase David Milne (the 'Tenant') because (1) 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 and (2) 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 also claimed compensation for each day the Tenant remained in the unit after the termination date.

The Landlord also applied for an order requiring 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.

This application was heard by videoconference on January 24, 2023.

Only the Landlord's Agent Niramayan Vigneswaran attended the hearing.

As of 10:27a.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.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the claim for compensation in the application. Therefore, the Tenant shall pay the Landlord \$2,500.00, which represents the reasonable costs of repairing the damage and replacing the damaged property, and \$3,953.45 in daily compensation for use and occupation of the rental unit for the period from March 1, 2022 to September 1, 2022.
2. On February 1, 2022 the Landlord served the Tenant with an N5 Notice of termination that alleged (1) that the Tenant's behaviour substantially interfered with the reasonable enjoyment or lawful right, privilege, and interest of the Landlord or another tenant and (2) that Tenant caused wilful or negligent damage to the rental unit in the amount of \$2,500.00.
3. The Tenant was in possession of the rental unit on the date the application was filed.
4. The Tenant vacated the rental unit on September 1, 2022. The Landlord testified that the Tenant may have vacated earlier but provided no notice. When the Landlord had not heard from the Tenant, he served a notice of entry, and then entered on September 1, 2022. At that time, he found the rental unit to be vacated.
5. As the Tenant has vacated, the Landlord did not pursue their claim for eviction but still sought daily compensation for use of the rental unit between the date of termination and when the Tenant vacated. The Landlord also sought compensation for the damages to the rental unit.
6. Based on the Monthly rent, the daily compensation is \$21.37. This amount is calculated as follows: \$650.00 x 12, divided by 365 days.
7. The Landlord testified that since the date of termination the Tenant made no rent payments.
8. The Tenant was required to pay the Landlord \$3,953.45 in daily compensation for use and occupation of the rental unit for the period from March 1, 2022 to September 1, 2022.
9. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
10. The Landlord collected a rent deposit of \$650.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$55.61 is owing to the Tenant for the period from August 16, 2016 to September 1, 2022.
11. 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.
12. On the Landlord's application they did not check off that they were seeking compensation for damage to the rental unit. Pursuant to Rule 15.4 of the Board's Rule's of Procedure I allowed the Landlord to amend their application at the hearing. In making that determination I considered that attached to the N5 Notice of Termination was a detailed

breakdown of the damage costs that the Landlord was seeking and as such I was satisfied that the Tenant had notice that the Landlord was seeking compensation for damage and what the specific damages were.

13. The Landlord testified regarding the following damage to the rental unit:
 1. Damage to the door and frame of the door at the entrance of the rental unit. The Landlord testified that the Tenant told him he caused this damage when he misplaced his key and was trying to get into the unit. The Landlord estimated that the cost to replace the door and doorframe was \$300.00.
 2. The Landlord testified that almost all the doors on the kitchen cabinets were missing and the remaining ones were damaged. The Landlord estimated that it would take \$300.00. to replace the cabinets.
 3. The Landlord testified that the kitchen countertops had severe damage including burn marks and water damage. The Landlord estimated that it would cost \$250.00 to replace the damaged countertops.
 4. The Landlord testified that there was damage to all the laminate flooring of the rental unit. The Landlord also testified that the floor transition strip was ripped off. The estimated cost to replace the flooring is \$800.00.
 5. Th Landlord testified that the Tenant tore off the light fixture in the main living area of the rental unit. The Landlord estimated that it would cost \$100.00 to replace.
 6. The Landlord testified that all the walls in the rental unit were damaged from nicotine and drawings. The Landlord testified that the Tenant used marker to write profanities all over the walls. The Landlord estimated that this would cost \$500.00 as multiple layers of paint would need to be applied to cover the profanities and drawings.
 7. The Landlord testified that the window in the living room was warped from the Tenant putting an air-condition unit in that did not fix. The Landlord estimated that the cost to replace the frame and glass would be \$250.00.
14. The Landlord also claimed \$100.00 to replace the front door locks because the Tenant replaced them and then did not provide a key. That is not a cost associated with damage so it will not be awarded.
15. The Landlord testified that the damage costs listed on the N5 notice were estimates to repair and replace the damaged property but since then he has completed all the work. The Landlord testified that the work cost him significantly more than what was estimated but given the wear and tear of some of the items he was only seeking what he had originally estimated.
16. While the Landlord did not introduce into evidence any supporting evidence about the damage or the costs of repair, I accept the uncontested testimony as it was provided in a straightforward and credible manner. This type of damage is not the type of damage that

you would expect with the wear and tear of time and therefore I find on a balance of probabilities that the Tenant, another occupant of the rental unit or a person whom the Tenant permitted in the residential complex wilfully or negligently caused the damage.

17. On a balance of probabilities, I also find the Landlord's requested replacement and repair costs to be reasonable. As such, the Tenant shall pay the Landlord \$2,500.00 to repair and replace the damaged property.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of September 1, 2022.
2. The Tenant shall pay to the Landlord \$3,247.84, which represents compensation for the use of the unit from March 1, 2022 to September 1, 2022, less the rent deposit and interest the Landlord owes on the rent deposit.
3. The Tenant shall pay to the Landlord \$2,500.00, which represents the reasonable costs of repairing the damage and replacing the damaged property.
4. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
5. The total amount the Tenant shall pay the Landlord is \$5,933.84.
6. If the Tenant does not pay the Landlord the full amount owing on or before March 4, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 5, 2023 at 5% annually on the balance outstanding.

February 21, 2023
Date Issued

Amanda Kovats
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.

