



**Order under Section 69 / 88.1  
Residential Tenancies Act, 2006**

**Citation:** Brownell v Wimperis, 2023 ONLTB 14430

**Date:** 2023-02-16

**File Number:** LTB-L-000888-21

**In the matter of:** 2326 SCRIVENS DR  
METCALFE ON K0A2P0

Vivian Brownell Landlord

**Between:**

**And**

Jack Wimperis and Karen St. John Tenants

2023 ONLTB 14430 (CanLII)

Vivian Brownell (the 'Landlord') applied for an order to terminate the tenancy and evict Jack Wimperis and Karen St. John (the 'Tenants') because:

- the Tenants, another occupant of the rental unit or someone the Tenants 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 Tenants have been persistently late in paying the Tenants' rent

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

The Landlord also claimed compensation 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.

This application was heard by videoconference on December 20, 2022.

Only the Landlord attended the hearing.

As of 9:22 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:**

**Preliminary Issue: The Amendment**

1. This matter originally began as an L2 application for eviction alleging that the Tenants persistently paid their rent late and substantially interfered with the Landlord's enjoyments or rights. The Landlord also sought out-of-pocket expenses for the interfering behaviour (approximately \$1,200) as well as post-termination date daily compensation. By the time this matter came before Member Begg in June 2022, the Tenants had vacated the unit. Member Begg noted that the Landlord was only seeking compensation as a result.
2. Member Begg also noted that the Landlord wished to amend the application in order to add a number of claims for various damages. However, Member Begg noted that while the amended application had been filed with the Board, it had not been served upon the Tenants. By interim order dated Member Begg directed the Landlord to serve, among other things, a copy of the amended application upon the Tenants by no later than June 30, 2022.
3. The proposed amendments add that the Landlord is seeking between \$2,000-\$6,600 for the reasonable costs that he Landlord has incurred or will incur as a result of the Tenant committing undue damage to the unit.
4. The Landlord served the Tenants by email. I am satisfied that the amendment will not prejudice the Tenants. They were served with a copy of the Landlord's proposed amendments which clearly indicate the Landlord is seeking more damages and for a different reason (undue damage). The amendments were served in accordance with Member Begg's direction and the application is amended accordingly.

## **L2 Application**

5. As noted above the Tenants were in possession of the rental unit on the date the application was filed but vacated the unit on February 6, 2022.
6. I will therefore not consider the eviction portion of the application on the ground that it is moot. For the same reason I will not consider the portion of the application based on the N8 notice of termination for persistent late payment of rent.
7. What remains is an application for damages for substantial interference as well as negligent or undue damage. As explained below, the Landlord has proven on a balance of probabilities the grounds for this application. I will therefore award \$6084.62 for repairs and \$186.00 for the filing fee.

### Substantial Interference and Undue Damage

8. The Landlord alleges that the Tenants substantially interfered with the Landlord's interest or rights, and also that they wilfully or negligently committed undue damage to the rental unit. The Landlord seeks out of pocket expenses that they say they have or will incur as a result.
9. I am satisfied on a balance of probabilities that the Tenants substantially interfered with the reasonable enjoyment of the residential complex by the Landlord or another lawful right, privilege or interest of the Landlord, and also that they wilfully or negligently committed undue damage to the unit.

10. I am satisfied that the following issues constitute undue damage, and I am satisfied that the Tenants or their guest wilfully or negligently caused the damage:

- cleaning up of hoarded items
- cleaning up of debris on floor
- cleaning excessive dirt in the fridge
- fixing paint and gyprock damage
- repair wall which has had significant amounts of plaster removed
- sink damage
- repair metal front door which shows significant deep scratching
- replace broken closet door which had been removed
- repair significant scratching to the tiles damage to kitchen floor
- repair significant scratching and grooving damage to living room floor
- repair significant scratching and growing damage to hallway floor
- replacement key for lawn tractor
- replacement cover for thermostat.

11. The Landlord provided photos of the damage and the receipts for the repairs. The damage is more than what would be considered normal wear and tear from regular usage.

### Remedy

12. The Landlord provided receipts establishing that they incurred expenses of \$6084.62. I am satisfied that these constitute reasonable out-of-pocket expenses that the Landlord incurred as a result of the Tenants' breaches, outlined above.

### Compensation

13. The Landlord also seeks post-termination date compensation.

14. The Tenants paid the Landlord rent of \$375 for the six days they remained in the unit past the termination date before vacating. The Landlord requested rent for the remainder of February and for March. It is not the Board's practice to grant compensation for rent after the Tenants have vacated the residence.

15. Based on the Monthly rent, the daily compensation is \$57.53. This amount is calculated as follows: \$1,750.00 x 12, divided by 365 days.

16. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

17. The Landlord collected a rent deposit of \$1,750.00 from the Tenants however this deposit was applied by the Tenants as their rent payment for the month of January 2022.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenants is terminated as of February 6, 2022, which is the date the Tenants vacated the unit.
2. The Tenants shall pay to the Landlord \$6084.62, which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the substantial interference.
3. The Tenants shall also pay to the Landlord \$186.00 for the cost of filing the application.
4. The total amount the Tenants owe the Landlord is \$6270.62.
5. If the Tenants do not pay the Landlord the full amount owing on or before March 2, 2023, the Tenants will start to owe interest. This will be simple interest calculated from March 3, 2023 at 5.00% annually on the balance outstanding.

**February 16, 2023**

**Date Issued**

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William Greenberg  
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.