



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

Citation: London & Middlesex Community Housing v Wheaton, 2023 ONLTB 20574

Date: 2023-02-15

File Number: LTB-L-068255-22

(formerly SWL-57173-21)

In the matter of: 316, 580 Dundas Street
London ON N6B1W9

Between: London & Middlesex Community Housing Landlord

And

Wayne Wheaton Tenant

London & Middlesex Community Housing (the 'Landlord') applied for an order to terminate the tenancy and evict Wayne Wheaton (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.

London & Middlesex Community Housing (the 'Landlord') also applied for an order requiring Wayne Wheaton (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 30, 2023.

Only the Landlord's agent, J. Drewitt, and the Landlord's legal representative, C. Burgess, attended the hearing.

As of 1:45 p.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.

This matter had been adjourned in March 2022, after a previous scheduled hearing when the Tenant had attended via an access terminal, but he had disappeared prior to giving his consent to an agreement that had been negotiated between the parties. The Tenant was notified about access to a PAT access terminal for this hearing, but there was a Board notification on the day of the hearing that the Tenant did not attend.

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. The Tenant will be ordered to compensate the Landlord for \$2,000.00 damage caused by the Tenant.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The Landlord incurred costs of \$186.00 for filing the application and is also entitled to reimbursement of those costs.

N5 Notice of Termination:

4. In the N5 notice of termination served by the Landlord on the Tenant on November 23, 2021, the Landlord alleges that the Tenant tampered with, and removed flooring from the rental unit in October 2021. It alleges that the Landlord's employees saw that flooring from the bedroom and living room was removed from the rental unit. The N5 notice of termination provides the Tenant 7 days to void the notice by paying the estimated damage of \$2,000.00. The Tenant did not pay the \$2,000.00 to the Landlord within 7 days of serving the notice of termination, and therefore the Tenant did not void the notice.
5. The Landlord's witness, J. Drewitt (JD), said that the Tenant told him that he removed the flooring from the rental unit because he believed that there were cockroaches underneath the floor. He submitted into evidence emails from the Landlord's employees from October 2021, in which they report that pest control was sent to the rental unit, and they discovered that flooring was removed. There were photo attachments of debris and flooring contents of the rental unit in carts in the hallway. There were also photos of the bathroom and other rooms in the rental unit showing flooring had been removed. JD said that there has been further damage to the rental unit and residential complex, in the region of a further \$1,700.00, since the application was filed.
6. JD submitted into evidence a video that depicted the Tenant entering the lobby and kicking a vestibule window that was also damaged.
7. JD submitted into evidence \$2,000.00 estimates of the damage to the flooring, and he said that these estimates had been communicated to the Tenant, but the estimate for the repair remains unpaid.
8. JD also submitted into evidence photos from a recent unit inspection on January 20, 2023, when it was observed that the flooring was still missing, and there was more damage to the rental unit, including a door to a closet that had been removed, garbage and clutter in the unit, and a lighting case had been removed. JD said that the Tenant has also damaged a vestibule entrance to the residential complex.

9. JD said that he connected the Tenant with various supports in the community, including a paralegal, who came and spoke with him. He said that the parties worked out a repayment agreement, but this was not respected by the Tenant.
10. JD said that he spoke with the Tenant on January 20, 2023, and he explained there was a hearing and an access terminal available for him. He said that the Tenant acknowledged the information.
11. The Landlord submits that the Landlord has gone to great lengths to resolve the issues between the parties, and has attempted to preserve the tenancy, but it submits that the tenancy is no longer viable. The Landlord submits that the Tenant refuses to repair or compensate the Landlord for damage caused by the Tenant, and the Tenant has also refused to honour the repayment agreement arrived at by the parties. The Landlord submits that the Tenant has caused further damage, and it now requests termination of the tenancy and compensation of \$2,000.00 for the damage to the flooring.
12. I find, on the uncontested evidence, including testimony, photos and emails, of the Landlord that the Tenant has caused damage to the flooring in the rental unit that will cost the Landlord at least \$2,000.00 to repair. The Landlord has attempted to come to a repayment agreement, and the Tenant has refused to honour the agreement. The matter was adjourned after the parties arrived at an agreement, and the Tenant did nothing further to either repair the damage or pay for the damage. In fact, the evidence proves, on a balance of probabilities, that the Tenant caused further damage to the rental unit and the residential complex.
13. Therefore, I find that the Landlord has proved, 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 undue damage to the rental unit or residential complex by damaging and removing flooring from the unit.
14. The Landlord will incur reasonable costs of at least \$2,000.00 to repair the damage and replace property that was damaged and cannot be repaired.
15. Based on the above, I find that the Tenant has done nothing to demonstrate a willingness to preserve the tenancy or resolve the issues between the parties, and it is prejudicial to the Landlord for the tenancy to continue and/or to continue the tenancy when the Tenant is continuing to cause damage to the unit and the residential complex. Consequently, 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:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before February 26, 2023.
2. If the unit is not vacated on or before February 26, 2023, then starting February 27, 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 27, 2023.
4. The Tenant shall pay to the Landlord \$2,000.00, which represents the reasonable costs of repairing the damage or replacing the damaged property.
5. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
6. If the Tenant does not pay the Landlord the full amount owing on or before February 26, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 27, 2023 at 5.00% annually on the balance outstanding.

February 15, 2023

Date Issued

Nancy Morris

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 27, 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.