



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Dietrich v Dennis, 2023 ONLTB 19881

**Date:** 2023-02-08

**File Number:** LTB-L-034186-22

**In the matter of:** 40 GRAYLEE AVE  
TORONTO ON M1J1M6

**Between:** Fay Dietrich and Steven Reid Landlord

**And**

Merrick Dennis Tenant

Fay Dietrich and Steven Reid (the 'Landlord') applied for an order to terminate the tenancy and evict Merrick Dennis (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes. **This is the L1 application.**

The Landlord also applied for an order to terminate the tenancy and evict the Tenant because they, another occupant of the rental unit or someone they permitted in the residential complex have wilfully or negligently caused undue damage to the premises. **This is the L2 application.**

The Landlord has also applied for an order requiring the Tenants to compensate the Landlord for the damage.

These applications were heard by videoconference on February 6, 2023.

Only the Landlord attended the hearing. The Landlord was represented by Bill Burd.

As of 9:16am, 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.

I note the Tenant joined the hearing room at 9:27am, after the matter had been already disposed of. I also note that the notice of hearing sent to the parties indicates that parties should join the hearing room at least 15 minutes prior to the hearing time (9:00am) and also indicates that if parties are late, the hearing may take place in their absence.

### Determinations:

#### L2 APPLICATION

1. By way of background, this is a month-to-month tenancy in which rent is due on the first of the month in the amount of \$625.00. The residential complex is a 3-bedroom house occupied by the Tenant.
2. The Landlord's L2 application is based on a first N5 notice of termination served to the Tenant on April 29, 2022, with a termination date of May 26, 2022 pursuant to subsection 62(1) of the *Residential Tenancies Act, 2006*.
3. As this was a first N5 notice of termination, the Tenant had seven days to void the notice by making the payment of the damages to the Landlord as stipulated on the notice of termination. Since the N5 was mailed and deemed served on May 4, 2022, this remedy period was between May 5 – May 12, 2022.
4. The Landlord's representative submitted that the Tenant did not void the N5 by making the payment of \$1,220.00 – which represented the cost to repair the door that had been damaged. Thus, I find the Tenant did not void the N5 notice of termination, and I proceeded to hear the Landlord's claim for termination of the tenancy based on willful and/or negligent damage.
5. The Landlord's evidence was on September 5, 2021, the police attended the premises based on a weapons call. During their visit to the premises, the door to the rental unit was forced open and damaged by the police.
6. The Landlord repaired the door and is seeking costs for this repair in the amount of \$1,220.00. A copy of the invoice for the charge to repair the door was submitted into evidence in support.

#### ANALYSIS

7. On any application before the Board, the party making an allegation in an application has the onus of proving those allegations on a balance of probabilities.
8. Subsection 62(1) and subsection 89(1) of the Act state the following:

**62 (1)** A landlord may give a tenant notice of termination of the tenancy 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.

**89 (1)** A landlord may apply to the Board for an order requiring a tenant or former 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,

- (a) while the tenant or former tenant is or was in possession of the rental unit, the tenant or former tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant or former tenant wilfully or negligently causes or caused undue damage to the rental unit or the residential complex;
9. Although the Landlord submits that it was the Tenant's criminal activities that ultimately led to the consequential damage that occurred to the entrance door to the rental unit by police, based on the evidence before the Board, while I find that the damage constitutes property damage that is not a result of normal wear-and-tear, I am not satisfied that the Tenant conduct (either willful or negligent) caused the damage to the door of the rental unit. I say this because the Landlord's representative's submission was the Tenant was not found at the property during the police's investigation nor is it clear who made the weapons call to the police or what involvement, if any, the Tenant had with respect to this call.
10. Subsections 62(1) and 89(1) of the Act are very specific as to who must be the cause of the damages, and in this case, the damage to the door was caused by police and not by the Tenant, or another occupant of the rental unit or by a person permitted into the rental unit or residential complex by the Tenant; this raises the question of whether the Tenant is liable for the cost of repair- which I find they are not.
11. As I find the Tenant is not responsible for the damage- the Landlord's L2 application must be dismissed.

### SECTION 82 CLAIMS

12. I note that on February 1, 2023, the Tenant and/or their agent uploaded to the Tribunals Ontario Portal, a list of claims they sought to raise pursuant to section 82 of the Act.
13. However, as the Tenant was not present at the hearing, I find that these claims have been abandoned.
14. This does not restrict the Tenant from filing their own applications with the Board.

### L1 APPLICATION

15. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
16. As of the hearing date, the Tenant was still in possession of the rental unit.
17. The lawful rent is \$625.00. It is due on the 1st day of each month.

18. Based on the Monthly rent, the daily rent/compensation is \$20.55. This amount is calculated as follows: \$625.00 x 12, divided by 365 days.
19. The Tenant has not made any payments since the application was filed.
20. The rent arrears owing to February 28, 2023 are \$13,750.00.
21. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
22. There is no last month's rent deposit.
23. The Landlord's representative seeks a termination order and requests an expedited eviction. The Landlord's representative submits that the first-named Landlord is an elderly person who has been suffering financially due to the Tenant's lack of payment since July 2021. The Landlord's representative submits that the Landlord seeks to acquire the property so that it can be sold and allow the Landlord the opportunity to recoup their losses from the Tenant.
24. While I can understand the difficulty that the Landlord is facing, I do not find it appropriate to grant the Landlord's request for an expedited eviction here. I say this because the application before the Board is about rent arrears and is voidable in nature. Expedited evictions are generally available for serious situations involving dangerous behaviour or criminality.
25. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
26. 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 unless the Tenant voids this order.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
  - \$13,936.00 if the payment is made on or before February 19, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after February 19, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.

4. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before February 19, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$13,434.30. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$20.55 per day for the use of the unit starting February 7, 2023 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlord the full amount owing on or before February 19, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 20, 2023 at 5.00% annually on the balance outstanding.
8. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
9. If the unit is not vacated on or before February 19, 2023, then starting February 20, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. 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 20, 2023.

**February 8, 2023**  
**Date Issued**

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Sonia Anwar-Ali  
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 expires on August 20, 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.

**Schedule 1**  
**SUMMARY OF CALCULATIONS**

**A. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before February 19, 2023**

Rent Owing To February 28, 2023	\$13,750.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$13,936.00</b>

**B. Amount the Tenant must pay if the tenancy is terminated**

Rent Owing To Hearing Date	\$13,248.30
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$13,434.30</b>
Plus daily compensation owing for each day of occupation starting February 7, 2023	\$20.55 (per day)