



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Shelly v Dinelle, 2023 ONLTB 18669

**Date:** 2023-02-06

**File Number:** LTB-L-022671-22

**In the matter of:** 456 QUEEN ST RR 1  
SMITHS FALLS ON K7A5B8

**Between:** Erin Shelly Landlord

**And**

Krystal Dinelle Tenant  
Kyle Berub

L1 Application:

Erin Shelly (the 'Landlord') applied for an order to terminate the tenancy and evict Krystal Dinelle and Kyle Berub (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

L2 Application:

The Landlord also applied for an order to terminate the tenancy and evict the Tenants 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 Landlord's L2 application also claimed reasonable out-of-pocket expenses for unpaid utilities that were the Tenants responsibility pursuant to the tenancy agreement.

This application was heard by videoconference on November 25, 2022. Only the Landlord and the Landlord's legal representative, J.Moak attended the hearing.

As of 9:30am, 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:**

L2 APPLICATION:

N5 Notice of Termination:

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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. Therefore, the application is granted, and the Tenancy shall terminate.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On March 29, 2022, the Landlord gave the Tenants an N5 notice of termination by mail. Accounting the 5 days for mailing, this notice was deemed served April 3, 2022. The termination date was April 25, 2022. The notice of termination contains the following allegations:
  - That on January 22, 2022, at 10:15am that upon an inspection by the Landlord they noted damages caused by the Tenants, took photographs of the rental unit, and was informed that the Tenants moved in an occupant without the Landlord's consent. The Landlord provided the Tenants a letter informing them that the Landlord would be returning on February 12, 2022, for a follow-up inspection.
  - That on February 12, 2022 at 3:00pm, the Landlord attended the follow-up inspection and observed the same damages from the original inspection on January 22, 2022, damages is estimated to be a total cost of \$5,556.37.
4. The Tenants did not correct the omission within the seven days after receiving the N5 notice of termination by paying to the Landlord \$5,556.37, as outlined in the notice.
5. Therefore, the Tenants did not void some of the allegations contained in the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act). I am satisfied that the Tenant has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another Tenant.
6. I am also satisfied that the Tenants, 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.
7. At the hearing the Landlord relied on photographs of the rental unit that were taken on the date of the inspections to show the condition of the rental unit and the damages. The Landlord also relied on a quote she received from contractors which outline a scope of work and material costs to replace the damaged property. I am satisfied on the evidence that the Landlord has proven her claim regarding the damages and find the costs to be reasonable in the circumstances.
8. Therefore, the Tenants shall pay to the Landlord \$5,556.37 which represents the reasonable costs that the Landlord will incur to repair the damage and replace property that was damaged and cannot be repaired.
9. The Landlord collected a rent deposit of \$2,100.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.

10. Interest on the rent deposit, in the amount of \$37.14 is owing to the Tenant for the period from June 6, 2021 to November 25, 2022.
11. In accordance with Section 89(2) of the Act the last month's rent ('LMR') deposit and interest shall be deducted from the amount owed by the Tenants.
12. As noted, the Tenant did not attend the hearing of this matter and thus I did not have the opportunity to hear their evidence regarding their circumstances. or to dispute the Landlord's application for an eviction order.
13. 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.

### Unpaid Utilities

14. The Landlord testified that pursuant to the tenancy agreement the Tenants are responsible to pay utilities. The Landlord gave evidence that the total outstanding amount for unpaid utilities is \$1,335.01 to November 1, 2022. The Landlord relied on a copy of the lease agreement confirming the Tenants obligation to pay utilities and copies of the utility bills to support the non-payment and amount outstanding.
15. Based on the uncontested evidence I am satisfied that the Tenants have an obligation pursuant to the tenancy agreement to pay utilities and have not done so, therefore an order for \$1,335.01 shall issue.

### L1 APPLICATION:

16. 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.
17. As of the hearing date, the Tenant was still in possession of the rental unit.
18. The lawful rent is \$2,100.00. It is due on the 1st day of each month.
19. Based on the Monthly rent, the daily rent/compensation is \$69.04. This amount is calculated as follows: \$2,100.00 x 12, divided by 365 days.
20. The Tenant has not made any payments since the application was filed.
21. The rent arrears owing to December 19, 2022, are \$32,350.00.
22. The Landlord incurred costs of \$186.00 for filing both applications and is entitled to reimbursement of those costs.

23. Because the tenancy is being terminated for substantial interference with a lawful right, privilege or interest, the eviction is not voidable under section 74 of the Act.
24. This order contains all of the reasons intended to be given, no additional reasons will be given.

**It is ordered that:**

L2 Application:

1. The tenancy between the Landlord and the Tenant is terminated pursuant to the L2 application. The Tenant must move out of the rental unit on or before February 17, 2023.
2. If the unit is not vacated on or before February 17, 2023, then starting February 18, 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 18, 2023.
4. The Tenant shall pay to the Landlord \$5,556.37, which represents the reasonable costs of repairing the damage and replacing the damaged property.
5. The Tenant shall pay to the Landlord \$1,335.01, which represents unpaid utilities up to November 1, 2022.
6. The Tenants shall also pay to the Landlord \$186.00, for the cost of filing the application.
7. The total that the Tenants owe the Landlord with respect to the L2 application is \$4,940.24. This amount is calculated as follows: \$5,556.37 (per paragraph 4) + \$1,335.01 (per paragraph 5), + \$186.00 (application fee), less \$2,100.00 (LMR deposit), less 37.14 (interest owed on deposit).
8. If the Tenant does not pay the Landlord the full amount owing on or before February 17, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 18, 2023 at 5.00% annually on the balance outstanding.

L1 Application:

9. The Tenants shall also pay to the Landlord \$32,536.00. 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.
10. The Tenant shall also pay the Landlord compensation of \$69.04 per day for the use of the unit starting November 26, 2022, until the date the Tenant moves out of the unit.

11. If the Tenant does not pay the Landlord the full amount owing on or before February 17, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 18, 2023, at 5.00% annually on the balance outstanding.

**February 6, 2023**  
**Date Issued**

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Curtis Begg  
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 18, 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.

\*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

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

Rent Owing To Hearing Date	\$32,350.00
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 of the last month's rent deposit	- \$0.00
<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>\$32,536.00</b>
Plus daily compensation owing for each day of occupation starting November 26, 2022	\$69.04 (per day)