



**Order under Sections 69 and 89
Residential Tenancies Act, 2006**

Citation: Axent v Johnson, 2023 ONLTB 17440

Date: 2023-01-31

File Number: LTB-L-045133-22

In the matter of: A, 271 WILSON ST
THUNDER BAY ON P7B1N1

Between: Donald Axent Landlord

And

Alexa Ann Johnson Tenants
Sherry Alexa Bulmer

Donald Axent (the 'Landlord') applied for an order to terminate the tenancy and evict Alexa Ann Johnson and Sherry Alexa Bulmer (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. Also, because the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully or negligently caused damage to the premises. And, because the Tenants or another occupant of the rental unit has committed an illegal act or has carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential complex involving the production of an illegal drug, the trafficking in an illegal drug or the possession of an illegal drug for the purposes of trafficking and in doing so, the Tenants, another occupant of the rental unit or a person the Tenants permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex. Also, because the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully caused undue damage to the premises. The Landlord also applied for an order requiring the Tenants 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 Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex.

This application was heard by videoconference on January 23, 2023. Only the Landlord's legal representative, Christopher Gash, attended the hearing. As of 4:33pm, neither of the Tenants were present or represented 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. The Landlord withdrew their N6 and N7 Notices. Therefore, this order is based solely on the grounds of damages to the rental unit under the N5 Notice of Termination (N5 Notice).
2. The Tenants were in possession of the rental unit on the date the application was filed.
3. On July 27, 2022, the Landlord gave the Tenant an N5 Notice. The termination date in the N5 Notice is August 20, 2022. The notice of termination contains the following allegations:
 - a) That the Tenants have substantially interfered with the reasonable enjoyment of the residential complex; and
 - b) That the Tenants have wilfully or negligently caused damage to the rental unit or residential complex between August 2021 to July 27, 2022 which included a number of holes in the walls and damaged interior doors in the rental unit and that the Tenants need to pay the Landlord the reasonable costs of \$2,574.85 or repair the damage in order to void the notice.
4. Subsection 62(3) of the *Residential Tenancies Act, 2006* (the 'Act') states that a tenant can void an N5 Notice by repairing the damaged property or by paying to the Landlord the reasonable costs to repair or replace the property, or the tenants can make arrangements satisfactory to the landlord to comply with this requirement within seven days after service of the N5 Notice. In this case, the seven-day voiding period is July 28, 2022 to August 4, 2022.
5. Based on the undisputed evidence of the Landlord, I find that the Tenants did not repair the damage, pay for the damage or make satisfactory arrangements with the Landlord to repair or pay for the damage and therefore did not void the N5 Notice.
6. For the reasons that follow, I am satisfied that the Tenants have wilfully or negligently caused undue damage to the rental unit and residential complex.
7. Uncontested evidence revealed that in August of 2021 the Landlord inspected the rental unit and discovered several holes in the walls throughout the rental unit and the two bedroom doors had been damaged. There were holes in the wall in the kitchen, bedrooms, stairway and living room. In addition, there were holes in both bedroom doors.
8. Attached to the N5 Notice were several pictures which detailed the damage in the rental unit and were provided to the Tenants with the notice.
9. Submitted into evidence at the hearing were pictures of the rental unit that were taken just prior to the Tenants taking up possession in the rental unit in April of 2021 that showed no damage to the walls or the doors.
10. The Landlord's application claims that it will incur costs of \$2,574.85 inclusive of HST to repair the damage and/or replace property that was damaged and cannot be reasonably repaired. This is the same amount noted on the N5 Notice for the estimated cost to repair or replace the damaged property. The Landlord provided estimates in this amount to

repair the damage and/or replace property that was damaged. I will award the Landlord the amount claimed in the application and the N5 Notice.

11. In the Divisional Court in *Ball v. Metro Capital Property*, [2002] O.J. No. 5931 the Court considered the meaning of what is now subsection 43(2) of the Act, which requires that a notice of termination given by a landlord “set out the reasons and details respecting the termination”. The Court concluded the notice in that case lacked sufficient details because the purpose of the notice is to ensure the tenant knows the case to be met and is thus in a position to decide whether or not to dispute the allegations at a hearing. The Court also concluded that the kinds of particulars that should be contained in a notice regarding a tenant’s behaviour should include “dates and times of the alleged offensive conduct together with a detailed description of the alleged conduct engaged in by the tenant”.
12. I am satisfied that the particulars given in the N5 Notice do comply with the requirements as set out in *Ball* on the basis that the notice also contained images of the damage and the amount to repair the damage to the rental unit. It was clear in the notice what was expected of the Tenants to void the notice and clear regarding the damage claimed.
13. As of the hearing date, the Landlord was unsure of any additional damages because the Tenants were not allowing access to the Landlord to inspect the unit.
14. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of 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 Tenants is terminated. The Tenants must move out of the rental unit on or before February 5, 2023.
2. If the unit is not vacated on or before February 5, 2023, then starting February 6, 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 6, 2023.
4. The Tenants shall pay to the Landlord \$2,574.85, which represents the reasonable costs of repairing the damage and/or replacing the damaged property.
5. The Tenants shall also pay to the Landlord \$186.00 for the cost of filing the application.
6. The total amount the Tenants owe the Landlord is \$2, 760.85.
7. If the Tenants do not pay the Landlord the full amount owing on or before February 5, 2023, the Tenants will start to owe interest. This will be simple interest calculated from February 6, 2023 at 5.00% annually on the balance outstanding.

January 31, 2023

Date Issued

Terri van Huisstede

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 6, 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.

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