



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

**Citation:** Houselink and Mainstay Community Housing v Rossi, 2023 ONLTB 15617

**Date:** 2023-01-18

**File Number:** LTB-L-012077-22

**In the matter of:** 110, 550 KINGSTON RD  
TORONTO ON M4E3V6

**Between:** Houselink and Mainstay Community Housing Landlord

**And**

Joshua Rossi Tenant

Houselink and Mainstay Community Housing (the 'Landlord') applied for an order to terminate the tenancy and evict Joshua Rossi (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. And, because 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 also applied for an order requiring 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 10, 2023. Only the Landlord's agents, Samyukta Hattangadi and Lillian Diamantakos, attended the hearing. As of 12:40pm, 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:**

1. On January 20, 2022 the Landlord gave the Tenant an N5 Notice of Termination (N5 Notice) which alleged that the Tenant, or someone visiting or living with the Tenant has substantially interfered with another tenant's or the Landlords reasonable enjoyment of the residential complex, and/or the Landlords lawful rights, privileges, or interests. The notice also alleged that the Tenant, or someone visiting or living with the Tenant has wilfully or negligently damaged the rental unit or residential complex. The termination date in the notice is February 17, 2022.

2. The part of the notice regarding termination for damage is deficient in that it does not indicate whether this is the first or second notice for damage. Therefore, I cannot consider this ground as it relates to termination of the tenancy. I can however consider the damages pursuant to subsection 89(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act') regarding an order for the Tenant to pay for undue damage to the rental unit or residential complex.
3. The N5 Notice alleges that On October 13, 2021 the Landlord attempted a pest control treatment for the Tenants unit and they were unable to do the treatment as a result of the excessive amount of clutter inside the rental unit.
4. At the hearing, the Landlord testified that there was so much clutter that the entry door to the unit could not be fully opened. As a result of the clutter, the Landlord spoke with the Tenant regarding having an agency come to the unit to help the Tenant clean out the excessive items in order to bring the unit to an acceptable level of cleanliness.
5. On November 22, 2021 the agency, "Tidy Service", attended the unit and was assisting with the clean up, but the Tenant and the Tenant's guest refused to leave the unit and were interfering with the cleaning. The agency continued to clean the unit thereafter and by November 24, 2021 they had finished. There was so much clutter that it took the agency almost three days to clean up the unit. The Landlord paid the company \$1,175.20 to clean the unit and the Tenant was required to pay the Landlord back, which they never did.
6. Shortly thereafter, on December 19, 2021 the Tenant purposely smashed the front door's glass panel by kicking it until the glass shattered so he could gain access to the building because he could not find his key. This cost the Landlord \$1,011.35 to repair the glass.
7. Then on January 10, 2022 the Landlord approached the Tenant because they discovered the Tenant's exterior window was smashed and the window directly below for the common room had also been smashed. Again, the Tenants response was they he did not have his keys to get into the unit so they stepped up on the glass and had to break their own window. This cost the Landlord \$2,542.50 for the common area glass and the Landlord indicates it will cost an additional \$785.35 to replace the Tenants window which has not yet been repaired as a result of the condition of the Tenants unit.
8. On January 20, 2022 the Tenant threatened the supportive housing worker in the main office, and even after being asked to stop the behaviour, the Tenant continued to swear and threaten them.
9. As of the hearing date, the Landlord indicated that they were unable to repair the Tenants unit window because the unit has become extremely cluttered and they are unable to get access inside the repair the window.
10. On a first N5 Notice, the Tenant has seven days to correct the issues listed in the notice in order to void it and remain in the unit. Since the Landlord served the Tenant with the N5 Notice on January 20, 2022, I find the voiding period to be between January 21, 2022 to January 28, 2022.
11. The evidence before me was that on January 21, 2022 the Tenant and their guest had an argument which was heated and resulted in the Tenant slamming the door and causing the glass to break in the door in the front foyer close to the elevator. The Landlord indicates that this is another \$1,000.00 to repair the glass door.

12. Based on the evidence of the Landlord, I am satisfied that the cluttered unit and the Tenant not paying the Landlord back for Tidy Clean and the behaviour with the Landlords staff, amount to substantial interference with the Landlords lawful right and interest. I also find that the Tenant did not void the notice because they had a heated argument with their guest on the day after being served with the notice.
13. The Landlord has also established that they should be entitled to the costs of the 4 broken glass panels because of the Tenants actions in breaking them. I find the Landlord is entitled to the reasonable costs of \$5,339.20 to repair and replace the damaged glass. I find the damage is undue and the Landlords costs to repair or replace the glass reasonable. However, I do not find that the cleaning cost of \$1,175.20 constitutes undue damage for the purpose of section 89 of the Act, and therefore that claim is denied.
14. As of the day of the hearing, the Tenant is still in possession of the rental unit.
15. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
16. There is no last month's rent deposit.
17. 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 not be unfair to postpone the eviction until February 12, 2023 pursuant to subsection 83(1)(b) of the Act.
18. Further to the N5 notice, as of December 2022 when the Landlord inspected the unit, the Tenant again has accumulated so many items in the unit that the Landlord cannot fully open the door. The Landlord testified that they are unable to get maintenance in to replace the glass for the window or to do any maintenance in the unit as a result of the excessive clutter. The Landlord believes that there is likely also a pest control issue in the unit as a result of the window being open and as a result of the unhygienic conditions.
19. The Landlord further indicated that they have offered the Tenant additional support with cleaning the unit, but the Tenant refuses to cooperate with the Landlord. The Landlord also indicated that the Tenant does have supports in place to relocate him under an eviction order.

**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 12, 2023.
2. If the unit is not vacated on or before February 12, 2023, then starting February 13, 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 13, 2023.
4. The Tenant shall pay to the Landlord \$5,339.20, which represents the reasonable costs of repairing the damage and/or replacing the damaged property.
5. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.

6. The total amount the Tenant owes the Landlord is \$5,525.20.
7. If the Tenant does not pay the Landlord the full amount owing on or before February 12, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 13, 2023 at 5.00% annually on the balance outstanding.

**January 18, 2023**

**Date Issued**

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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 13, 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.