



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

**Citation:** Merkur Properties v Abebe, 2023 ONLTB 15444

**Date:** 2023-01-17

**File Number:** LTB-L-041003-22

**In the matter of:** 115, 2225 Eglinton Avenue East  
Toronto Ontario M1K2M7

**Between:** Merkur Properties Landlord

**And**

Benyam Abebe

Tenant

Merkur Properties (the 'Landlord') applied for an order to terminate the tenancy and evict Benyam Abebe (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.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

Merkur Properties (the 'Landlord') also applied for an order requiring Benyam Abebe (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 11, 2023.

Only the Landlord's agent Abdul Shattaur (AS) and the Landlord's legal representative Geoff Paine (GP) attended the hearing.

As of 11:43 am, 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.

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### **Determinations and Reasons:**

1. The Landlord applied for an order to terminate the tenancy on March 3, 2022.
2. On the date of the hearing, AS testified that the Tenant vacated the rental unit on May 31, 2022, returning vacant possession to the Landlord. Accordingly, the Landlord's N5 notice of termination is moot.

#### L2 Application

3. The final claim in the application is made by way of s.89(1) of the Act. That provision reads as follows:

A landlord may apply to the Board for an order requiring a 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 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 and the tenant is in possession of the rental unit. (Emphasis added)

4. This application claims an amount of \$6,295.77 under s.89(1) of the Act for damages to the rental unit when the Tenant candle, left unattended, ignited a cloth flag hanging on the wall, causing the emergency sprinkler system to trigger, which then resulted in water damage to the Tenant's unit as well as another unit and the common hallway. The Landlord's evidence also shows that the Tenant had illegally covered the in-unit smoke detector that also resulted in the activation of the sprinkler system.
5. The Landlord submitted as evidence, incident reports, invoices, correspondence and photos.
6. Although this order does not specifically address each piece of evidence individually or reference all of the testimony, I have considered all of the evidence and oral testimony when making my determinations.

7. AS is the Landlord's Super Intendent for approximately 25 years. On or around October 30, 2021, AS said the fire alarm was activated when the Tenant left a candle unattended that caused a fire within the rental unit. The fire department was dispatched. AS said the firefighters advised that the fire was caused by the candle and that the Tenant had covered the smoke detector, which prolonged notification of fire and activated the sprinkler system. AS said, there was significant water accumulation in the rental unit, neighbouring unit and hallway and the Landlord had to hire a company for remediation.
8. It was the testimony of AS that the Tenant arrived back to the rental unit, later that evening and admitted to covering the smoke detector and lighting the candle. As a result, AS said the Tenant was forwarded the cost of remediation in the amount of \$6,295.77 and the Tenant did not pay the Landlord.

### Analysis

9. In the matter before the Board, I am satisfied on a balance of probabilities that by leaving the candle unattended and covering the smoke detector, the Tenant caused damage in the

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rental unit. As a result of the Tenant's negligence, the sprinkler system was activated causing excessive water in the rental unit and residential complex. I am also satisfied that proper professional services were required to perform the remediation of the unit and residential complex.

10. I find that there is sufficient direct and causal connection between the Tenant's actions and resulting damage as detailed in this order. I find the Landlord met the burden of proof that the Tenant's wilful or negligent conduct resulted in the damages.
11. 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 terminated May 31, 2022.
2. The Tenant shall pay to the Landlord \$6,295.77, which represents the reasonable costs of repairing the damaged property.
3. The Tenant shall also pay to the Landlord \$201.00 for the cost of filing the application.
4. The total amount the Tenant owes the Landlord is \$6,496.77.
5. If the Tenant does not pay the Landlord the full amount owing on or before January 28, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 29, 2023 at 5.00% annually on the balance outstanding.

**January 17, 2023**

**Date Issued**

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**Dana Wren**

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.

2023 ONL/TB 15444 (CanLII)