



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

Citation: Lambert v Carswell, 2023 ONLTB 15125

Date: 2023-01-17

File Number: LTB-L-041144-22

In the matter of: 4, 237 PILLETTE RD
WINDSOR ON N8Y3B1

Between: Josh Lambert Landlord

And

Mark Jason Carswell Tenant

Josh Lambert and Joshua Lambert (the 'Landlord') applied for an order to terminate the tenancy and evict Mark Jason Carswell (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully caused undue 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 December 21, 2022. The Landlord and the Tenant attended the hearing.

Determinations:

PREMININARY ISSUE

1. At the outset of the hearing the Tenant requested an adjournment. The reason for the adjournment was so that he could retain and prepare with counsel and the Tenant was preparing to file his own application and would like the matters to be heard together. For the following reasons, I declined the Tenants request for an adjournment.
2. First, it would not be reasonable for the Board to postpone the hearing of an already scheduled matter to be heard with an application that has yet to be filed. Secondly, I canvassed the Tenant with respect to the issues in the N7 Notice of Termination. The Tenant submitted that he did not dispute the allegations in the notice but had his own explanation as to why he caused the damage. Given that the issues were not in dispute the hearing would be a simple one. I have a requirement under the Act to be expeditious, as such the hearing proceeded on its merits.

L2 APPLICATION

3. 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.
4. Therefore, the Tenant must pay the Landlord \$850.00 for the cost to replace the door broken by the Tenant.
5. The Tenant was in possession of the rental unit on the date the application was filed.
6. On July 19, 2022, the Landlord gave the Tenant an N7 notice of termination. The notice of termination contains the following allegations:

Details About the Reasons for this Notice

I have listed below the events that have led me to give you this notice, including the dates, times and specific details.

Date/Time	Details of the Events
MARCH 10, 2022 / 3:00PM	MR CARSWELL WAS GIVEN AN N5 NOTICE REGARDING HIS INNAPPROPRIATE USE OF THE UTILITY ROOM AND RESPONDED IN A HOSTILE MANNER. A LOCKSMITH WAS HIRED TO SECURE THE UTILITY ROOM.
JULY 14TH 2022 / 1:30PM	MR CARSWELL DELIBERATELY AND WILLFULLY DAMAGED A FIRE RATED DOOR TO GAIN UNLAWFUL ENTRY TO THE UTILITY ROOM.

7. The notice served was for wilful damage and not for impairment of safety or substantial interference, therefore the hearing was narrowed to only discuss the issue pertaining to the wilful damage as alleged on July 14, 2022.
8. During the hearing, the Tenant did not dispute that he damaged the door to gain entry to the utility room. The Tenant also did not dispute that the damage was wilful. As such the Landlord’s application is granted.
9. The Tenant testified that he used to have access to the utility room, however the property was sold, and the new Landlord had restricted his access to this room. On July 14, 2022, the electricity in his unit was temporarily out. He believed that it was due to a breaker being tripped. The Tenant submitted that he attempted to contact the onsite staff person of the Landlord and when they did not answer the door- he proceeded to cut a hole in the door to gain entry to the utility room where the electrical panel for the residential complex is located.
10. The Landlord has incurred reasonable costs of \$850.00 to replace property that was damaged and cannot be repaired. The Landlord relied on an estimate to replace the door to the utility room that was broken by the Tenant. I accept the Landlord’s evidence with respect to the replacement cost and find it reasonable. An order for this amount shall issue.

RELIEF FROM EVICTION

11. 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

grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

12. The Landlord is seeking termination of the Tenancy as a result of the Tenant breaking the door, as well as other issues pertaining to the tenancy. I explained to the Landlord that on an application such as this, what I am to consider is the willful damage caused by the Tenant. The Landlord may have legitimate issues, but there are other appropriate notices for those issues.
13. The Tenant submitted that he would like to stay in the unit and pay the Landlord back for the damage he caused.
14. I must also consider what was damaged, in essence this hearing is about a broken door. I have a Tenant who acknowledged that he broke the door and is willing to compensate the Landlord to make him whole.
15. Based on these reasons, I find that issuing an order with conditions is sufficient enough to address the Landlord's interests in an effort to preserve the tenancy.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
2. The Tenant shall pay to the Landlord \$850.00 for the cost to replace the utility room door, in accordance with the following schedule:
 - a) The Tenant shall pay \$283.00 on or before January 31, 2023;
 - b) The Tenant shall pay \$283.00 on or before February 28, 2023; and
 - c) The Tenant shall pay \$284.00 on or before March 31, 2023.
3. The Tenant shall refrain from causing further damage to the residential complex.
4. If the Tenant fails to comply with the conditions set out in paragraph 2 and 3 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.
5. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
6. If the Tenant does not pay the Landlord the full amount owing in accordance with paragraph 5 on or before January 22, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 23, 2023 at 5.00% annually on the balance outstanding.

January 17, 2023
Date Issued

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.