



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

**Citation:** The Corporation of the County of Wellington v Tucker, 2023 ONLTB 13922

**Date:** 2023-01-11

**File Number:** LTB-L-039167-22

**In the matter of:** 191 WILLOW RD  
GUELPH ON N1H1W9

**Between:** The Corporation of the County of Wellington Landlord

**And**

Cynthia Tucker Tenant

The Corporation of the County of Wellington (the 'Landlord') applied for an order to terminate the tenancy and evict Cynthia Tucker (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex; and
- 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 claimed compensation for each day the Tenant remained in the unit after the termination date.

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 14, 2022.

The Landlord's Agent, Michelle Ascencio, and the Landlord's Legal Representative, Peter Schroeder, attended the hearing. Barry Williams (BW), Kala Flannery (KF), and Kate Gerreman (KG) appeared as witnesses for the Landlord.

As of 1:40 p.m., 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:**

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 and out of pocket expenses in the application. Therefore, the tenancy is terminated on January 22, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The residential complex is comprised of 47 two-storey townhomes. The rental unit is a 3-bedroom townhome.
4. The Landlord's application is preceded by an N7 notice of termination ('N7 Notice') deemed served on July 12, 2022 in accordance with *the Residential Tenancies Act, 2006* (the 'Act'). The N7 Notice contains allegations that the Tenant has seriously impaired the safety of another person and had caused wilful damage to the rental unit.

**Serious Impairment of Safety***Landlord's evidence – testimony of BW*

5. BW testified that he has been employed as a Fire Prevention Officer with the City of Guelph for twenty-two years. He testified that during the first inspection on May 11, 2022 he observed that the rental unit was in a hoarding situation. He testified that the smoke detector had been tampered with, an extensive number of combustibles were located near ignition sources and there were no clear paths through the rental unit should there be an emergency.
6. The Landlord's Legal Representative submitted a series of photographs that BW took during his inspection on May 11, 2022 as evidence. The main bedroom door is broken but tied shut and "booby trapped" to stop anyone from entering. The second bedroom is cluttered with clothing, boxes, furniture, and other combustible items. The third bedroom, which appears to be a child's bedroom, is in similar condition to the second bedroom with an excessive number of items piled up and covering the entire floor surface. As with the other bedrooms, the flooring is not visible and there is no clear path throughout the room. The kitchen area was cluttered with a large piece of foam located next to the stove. A mattress and other items are blocking the bottom of the stairs in the basement and the furnace area is cluttered with combustible items including foam, clothing and wood shelves. The electrical panel was inaccessible due to furniture and blankets.
7. BW testified the Tenant was served with an inspection order on May 16, 2022 with a compliance date of June 20, 2022. He testified he inspected the rental unit again on June 22, 2022 and observed no change to the condition of the unit. He testified that he spoke to the Tenant and advised her that she was being charged under the *Fire Protection and Prevention Act*, for non-compliance with the order. He further testified that the Tenant understood the charges filed against her.
8. The Landlord's Legal Representative submitted a prosecutor brief as evidence. This document showed the offence as charged and included the details of BW's inspection and his findings. The document included the following:

- a) Breaches in fire separations, this included holes in walls, missing doors, doors which had been holes broken through
  - b) Smoke and co alarms missing
  - c) Obstructed means of egress
  - d) Combustibles near sources of ignition
  - e) 1 meter clearance not provided around electrical panel, furnace, and hot water heater
9. BW testified that another inspection was conducted on November 28, 2022. He testified that there was no improvement to the rental unit. He testified that he spoke to the Tenant who indicated that she was not concerned that the situation had not changed. He further testified that she did not request any assistance and was not interested in any discussions of how to comply with the fire order.
10. Based on the uncontested evidence before me, I am satisfied on a balance of probabilities that by maintaining the rental unit in a constant state of uncleanliness and clutter, and by tampering with the smoke detectors, the Tenant has seriously impaired their own safety and the safety of others. In addition to the photographs from the inspection on May 16, 2022, I have the fire inspector's order and evidence of charges laid against the Tenant for non-compliance with that order which clearly indicate that the rental unit is a fire hazard and exits are unclear and obstructed. This is concerning because in the case of an emergency, the Tenant and anyone else in the rental unit could not easily navigate the unit and exit if necessary.
11. I am satisfied that the excessive amounts of combustible materials in the rental unit are a health and safety risk because they could contribute to the spread of a fire through the unit. This poses a risk not only to the Tenant and others inside the unit, but also approximately 1500 other residents of the residential complex. The health and safety risks created by the excessive amounts of combustible materials and the obstruction of exits in the rental unit constitute a serious impairment of safety.

#### *Testimony of KF*

12. KF testified that she has been employed by the Landlord for eight years as the maintenance coordinator. She testified that on May 16, 2022 she accompanied BW during the inspection of the rental unit. During the inspection she found all the doors in the unit were damaged, graffiti, holes, and paint splatter on the walls, paint damage on the floors, the front door frame damaged, numbers spray painted on the outside brick, missing smoke detector in the basement and front hallway, the toilet severely clogged, the bathroom vanity damaged, and the spigot missing from the bathtub. She also stated the windows were damaged, holes in the ceiling, splattered paint on the ceiling, and a hatchet mounted with screws on the living room wall.
13. The Landlord's Legal Representative submitted a series of photographs of the damages described above and an estimate from JM Vivash Renovations & Repairs Inc. for the repair and replacement of the damaged areas in the amount of \$37,869.58. At the hearing, this amount was reduced to \$28,729.51. He also submitted an invoice from Flannery Electrical Inc. for the replacement of three smoke/co detectors in the amount of \$294.24.

14. KF testified that during another inspection on August 17, 2022, it was observed that the Tenant had removed the smoke/co detectors again.
15. Based on the uncontested evidence before me, I am satisfied on a balance of probabilities that the Tenant had caused undue damage to the rental unit and this damage was caused wilfully by the Tenant, an occupant of the rental unit, or someone the Tenant has permitted in the rental unit. The damage is so excessive that the Landlord will incur or had incurred significant costs to return the rental unit to its original state. I therefore find the Landlord is entitled to compensation for these damages.

#### *Testimony of KG*

16. KG testified that she has been employed by the Landlord since 2013 as a housing community social worker offering support to tenants. She testified that she has been working with the Tenant throughout her tenancy. She does not provide clinical services but refers tenants to social agencies.
17. KG testified the Tenant has been provided with referrals to Stonehenge Therapeutic Community and CMHA Service Resolution for the Adult Addiction and Mental Health System. She testified that due to the Tenant's lack of participation she does not qualify for their services. She testified the Tenant has refused support and is difficult to communicate with. She further testified that she lives in the rental unit alone and her income is sourced from the Ontario Disability Support Program.
18. Based on the uncontested evidence before me, I am satisfied on a balance of probabilities that the Landlord has provided the Tenant with several opportunities to remediate the safety issues in her unit as well as provide her with referrals to social agencies for assistance. The Landlord has a duty to accommodate the Tenant to the point of undue hardship and based on the testimony of KG, I am satisfied the Landlord has met this requirement.

#### **Section 83 considerations**

19. The Landlord is seeking termination of the tenancy on an expedited basis.
20. When considering relief from eviction it is incumbent on the Board to consider all the circumstances. In this case the Tenant was not present to give me any of her circumstances to consider, therefore I am only able to consider what was presented to me at hearing all of which points to the Tenant being negligent and impairing the safety of others. I find it would be far more prejudicial to the Landlord to allow the Tenant any extra time in the unit due to her negligent and wilful conduct.
21. 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.

**Daily compensation**

22. The Tenant was required to pay the Landlord \$4,107.95 in daily compensation for use and occupation of the rental unit for the period from September 1, 2022 to December 14, 2022.
23. Based on the Monthly rent, the daily compensation is \$39.12. This amount is calculated as follows: \$1,190.00 x 12, divided by 365 days.
24. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
25. There is no last month's rent deposit.

**Compensation for damages**

26. As I have found that the Tenant, 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, the Landlord is entitled to compensation for the damages.
27. The Landlord has incurred or will incur reasonable costs of \$29,022.75 to repair the damage and/or replace property that was damaged and cannot be repaired.

**Expedited enforcement**

28. The Landlord's Legal Representative requested expedited enforcement of the eviction because of the seriousness of the Tenant's behaviour and the disregard of her own safety and the safety of others.
29. Section 84 of the Act says:

Subject to clause 83 (1) (b), the Board shall, in an order made under section 69 based on a notice given under subsection 61 (1) that involves an illegal act, trade, business or occupation described in clause 61 (2) (a) or based on a notice given under section 63, 65 or 66, **request that the sheriff expedite the enforcement of the order.**  
[Emphasis added]

30. For the reasons that follow, I grant the Landlord's Legal Representative's request for expedited enforcement of the eviction order.
31. The Tenant behaviour has caused significant damage to the rental unit and has seriously impaired the safety of others. There is no indication that either behaviour will stop, therefore, expedited eviction is necessary to thwart further damage and for the safety of others in the rental unit and/or residential complex.
32. This order contains all the reasons for the decision within it. No further reasons shall be given.

**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 January 22, 2023.
2. If the unit is not vacated on or before January 22, 2023, then starting January 23, 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 January 23, 2023. **The Sheriff is requested to expedite the enforcement of this order.**
4. The Tenant shall pay to the Landlord \$4,107.95, which represents compensation for the use of the unit from September 1, 2022 to December 14, 2022.
5. The Tenant shall also pay the Landlord compensation of \$39.12 per day for the use of the unit starting December 15, 2022 until the date the Tenant moves out of the unit.
6. The Tenant shall pay to the Landlord \$29,022.75, which represents the reasonable costs of repairing the damage and replacing the damaged property.
7. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
8. The total amount the Tenant owes the Landlord is \$33,316.70. The Landlord must deduct from this amount any payments received from the Tenant.
9. If the Tenant does not pay the Landlord the full amount owing 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 11, 2023**  
**Date Issued**

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Susan Priest  
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 July 23, 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.