



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Dupee v Kusz, 2022 ONLTB 14161

**Date:** 2022-12-14

**File Number:** LTB-L-051857-22

**In the matter of:** 262 Lorne Avenue  
Newmarket, ON L3Y 4K4

**Between:** Marle-Rae Dupee Landlord

**And**

Edyta Kusz Tenant

Marle-Rae Dupee (the 'Landlord') applied for an order to terminate the tenancy and evict Edyta Kusz (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

Further, the Landlord applied for an order to terminate the tenancy and evict 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:

Further, the Landlord applied for an order to terminate the tenancy and evict 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:

Further, The Landlord applied for an order to terminate the Tenant because the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex used the rental unit or the residential complex in a manner that is inconsistent with use as a residential premises and that has caused or can be expected to cause significant damage.

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

This application was heard by videoconference on November 28, 2022.

The Landlord, the Landlord's agent Santi Comitini and the Tenant attended the hearing. The Tenant spoke with Tenant Duty Counsel prior to the hearing.

### **Determinations:**

#### *Adjournment Request*

1. The Tenant had sought an adjournment of the hearing on the basis that she had thought that the hearing was to start at 9:00 am and that she was scheduled to work at 10:00 am.

The Landlord opposed the request on the basis that she had taken time off to attend the hearing.

2. The adjournment request was denied on the basis that the Tenant had never properly reviewed the documents that were sent to her from the Board with respect to the requirement to be available the entire day for her hearing, and the prejudice to the Landlord should the matter be delayed any further.

### *L1 Application*

3. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
4. As of the hearing date, the Tenant was still in possession of the rental unit.
5. The lawful rent is \$1,025.00. It is due on the 1st day of each month.
6. Based on the Monthly rent, the daily rent/compensation is \$33.70. This amount is calculated as follows: \$1,025.00 x 12, divided by 365 days.
7. The Tenant has not made any payments since the application was filed.
8. The rent arrears owing to November 30, 2022 are \$7,700.00.
9. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
10. There is no last month's rent deposit.
11. The Tenant did not deny that she owed the arrears and testified that she was saving money in order to vacate the unit. The Tenant intends on vacating the unit and just asked for additional time to do so. The Landlord requested a standard order of 11 days as the Tenant moved into the unit in March of 2022 and has failed to pay rent the last 7 months.
12. Based on the evidence of both parties, eviction will be ordered however it will be delayed until January 3, 2022 to allow the Tenant time to find a new unit.
13. 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 January 3, 2023 pursuant to subsection 83(1)(b) of the Act.

### *L2 Application*

#### *N5 Notice of Termination*

14. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy or the claim for compensation in the application. Therefore, the application is dismissed.
15. The Tenant was in possession of the rental unit on the date the application was filed.

16. On April 13, 2022, the Landlord gave the Tenant an N5 notice of termination deemed served that same date. The notice of termination contains the following allegations: On April 4, 2022, the Tenant left garbage and food in the shared kitchen. Further, on April 10, 2022, the Tenant was discovered to have a hot plate, microwave and a fridge in her room and the Tenant left old food in her room. Further, on April 12, 2022, the Tenant left the oven on prior to leaving the residential complex.
17. The Tenant was served a second N5 notice of termination on May 13, 2022 deemed served that same date. The notice of termination contains the April 4 and April 12, 2022 allegations from the first N5 and an additional allegation from May 13, 2022 alleging that the Tenant had installed a portable clothes washer in her bedroom.
18. At the hearing, I had noted that the Landlord had failed to check off the 7-day voiding period in the first N5 notice and had included allegations from the first N5 within the voiding period of the second N5. On the basis of those errors, I had found that the Landlord's N5 notices were deficient and that portion of the Landlord's L2 application was dismissed.

#### *N7 Notice of Termination*

19. On May 16, 2022, the Landlord gave the Tenant an N7 notice of termination deemed served that same date. The notice of termination contains the following allegations: That on April 10, 2022, the Tenant was found to have a hot plate, microwave and fridge in her room. Further, on May 13, 2022, the Tenant was found to have a portable clothes washer in her bathroom and that further, on May 15, 2022, water had destroyed the downstairs bathroom from the Tenant's bathroom due to leaking water coming from her unit.
20. The Landlord alleges that the Tenant has wilfully caused undue damage to the residential complex by installing a portable clothes washer in her unit that caused a leak in the bathroom that caused damage to the ceiling of the downstairs bathroom.
21. The Landlord alleges that the Tenant had dumped water from the washer down the shower that had leaked down into the lower floor bathroom causing damage to the drywall and tiles. Photos of the damage were entered into evidence.
22. The Landlord alleges that the damage will cost approximately \$7,000.00, as new drywall and tiles are required. No cost estimate was provided in evidence and the Landlord testified that this amount was provided to her from a contractor who looked at the ceiling but did not look at the master bathroom prior to making this estimate.
23. The Tenant testified that although she did purchase the portable washer, she never installed it as a friend of hers who is a plumber advised her not to.
24. The Tenant further testified that the residential complex is old and that the damage likely occurred due to the Landlord's lack of maintenance.
25. Section 62(1) of the Act states that a landlord may give a tenant notice of termination of the tenancy if the tenant wilfully or negligently causes undue damage to the rental unit or the residential complex.
26. Having considered the evidence of both parties, I am not satisfied on a balance of probabilities that the Landlord has proven that the Tenant has wilfully caused undue damage to the residential complex.

27. The evidence presented by the Landlord with respect to the damage and its cause is lacking any intent or negligent act committed by the Tenant in any respect. Further, the evidence is lacking in respect to specifics. The Landlord testified that neither herself nor her contractor had inspected the master bathroom to determine the source of the damage.
28. The Landlord further alleges that the Tenant has used the rental unit or the residential complex in a manner that is inconsistent with use as a residential premises and that has caused or can reasonably be expected to cause significant damage.
29. The Landlord alleges that the Tenant, who is renting a room within the residential complex with other tenants, is using her unit in an inconsistent manner by using a hot plate in her room as opposed to using the cooking amenities in the shared kitchen. The Landlord suggests that the use of a hot plate in her room is a fire hazard.
30. The Tenant testified that she has never had any issues with using her hot plate and that she does so because she does not want to use the kitchen due to uncleanliness.
31. Section 63(1)(b) of the Act outlines that the rental unit or residential complex must be used in a manner that is inconsistent with use as a residential premises *and* can be expected to cause damage. While the use of a hot plate in a careless manner has the potential to cause damage, the allegation is only proven if the evidence shows that the Tenant's unit was not used as a residential premises.
32. Based on the evidence of both parties, I find on a balance of probabilities that the Landlord has not proven that the Tenant has used the rental unit or the residential complex in a manner that is inconsistent with use as a residential premises and that caused or can reasonably be expected to cause significant damage, as use of a hot plate in a bedroom is not inconsistent with the use of a residential premises.
33. As such, the Landlord's N7 portion of their L2 application is also dismissed.

**It is ordered that:**

34. The Landlord's L2 application is dismissed.
35. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
36. **The Tenant may void this order and continue the tenancy by paying to the Landlord:**
  - a. \$8,926.00 if the payment is made on or before December 31, 2022. See Schedule 1 for the calculation of the amount owing.

**OR**

  - b. \$9,951.00 if the payment is made on or before January 3, 2023. See Schedule 1 for the calculation of the amount owing.
37. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after January 3, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.

38. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before January 3, 2023.**
39. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$7,819.60. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
40. The Tenant shall also pay the Landlord compensation of \$33.70 per day for the use of the unit starting November 29, 2022 until the date the Tenant moves out of the unit.
41. If the Tenant does not pay the Landlord the full amount owing on or before December 25, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 26, 2022 at 4.00% annually on the balance outstanding.
42. If the unit is not vacated on or before January 3, 2023, then starting January 4, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
43. 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 4, 2023.

**December 14, 2022**

**Date Issued**

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Jagger Benham

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 expires on July 4, 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.

**Schedule 1  
SUMMARY OF CALCULATIONS**

**A. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before December 31, 2022**

Rent Owing To December 31, 2022	\$8,725.00
Application Filing Fee	\$201.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$8,926.00</b>

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before January 3, 2023**

Rent Owing To January 31, 2023	\$9,750.00
Application Filing Fee	\$201.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$9,951.00</b>

**C. Amount the Tenant must pay if the tenancy is terminated**

Rent Owing To Hearing Date	\$7,618.60
Application Filing Fee	\$201.00
<b>Total amount owing to the Landlord</b>	<b>\$7,819.60</b>
Plus daily compensation owing for each day of occupation starting November 29, 2022	\$33.70 (per day)