



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Kuna v Harps, 2022 ONLTB 12571

**Date:** 2022-11-18

**File Number:** LTB-L-036210-22

**In the matter of:** 303 PRINCE ARTHUR ST  
CORNWALL ON K6H4P1

**Between:** Clara Kuna Landlord

**And**

Kayla-Lynn Harps Tenant

Clara Kuna (the 'Landlord') applied for an order to terminate the tenancy and evict Kayla-Lynn Harps (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlord also 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;
- 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 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;
- 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 November 14, 2022. Only the Landlord and the Landlord's legal representative, M. Beaupre, attended the hearing. As of 1:25 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.

**Determinations:****L1 Application**

1. 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.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$1,600.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$52.60. This amount is calculated as follows: \$1,600.00 x 12, divided by 365 days.
5. The Tenant has paid \$7,485.00 to the Landlord since the application was filed.
6. The rent arrears owing to November 30, 2022 are \$1,418.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$997.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.

**L2 Application**

9. 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. Therefore, the tenancy is terminated, and the Tenant shall pay compensation to the Landlord for damages.

**N7 Notice of Termination**

10. The Landlord made a request to withdraw the N7 Notice from the L2 Application. In accordance with subsection 200(4) of the Act, I consent to the withdrawal.

**N5 Notice of Termination**

11. On June 20, 2022, the Landlord gave the Tenant an N5 Notice of Termination (the 'N5 Notice') pursuant to section 62 and 64 of the *Residential Tenancies Act, 2006* (the 'Act'). The notice of termination alleges that on several dates, the Tenant caused a flood in her unit, resulting in damages to the unit below.
12. The Landlord testified that on May 26, 2022, she received a call from the tenants residing in unit 301 about a leak coming from the bathroom ceiling. She attended the Tenant's unit on May 28, 2022 and saw the bathtub overflowed and there was a blockage in the sink. The Landlord addressed the issue by caulking around the tub and the Tenant advised she would not overflow the bathtub again.

13. From June 11-17, 2022, there were several complaints from the tenants of unit 301 regarding leaking from the ceiling. The Landlord attended on June 19, 2022 to investigate with a plumber, and they saw that the Tenant's sink was clogged with several items. Submitted into evidence was a video of cigarette butts and a bottle cap being pulled out of the sink. When the items were removed, the sink drained without issue.
14. The Landlord also submitted into evidence an estimate from Roland Renovations dated November 1, 2022 regarding the damages to unit 301 from the floods.

### **Substantial Interference**

15. Subsection 64 (1) of the Act states a landlord may give a tenant notice of termination if the conduct of the tenant, another occupant of the rental unit or guest by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex of another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.
16. Based on the uncontested evidence of the Landlord, I find that the Tenant substantially interfered with the Landlord's rights and privileges by causing floods in the unit and damages to the unit below. I also find that the Tenant substantially interfered with other tenant's reasonable enjoyment as the floods resulted in leaks in their unit.

### **Undue damage**

17. Subsection 62(2) of the Act states that a landlord may give a tenant notice of termination if the tenant, another occupant or guest wilfully or negligently causes undue damage to the residential complex.
18. Based on the uncontested evidence of the Landlord, I find that the Tenant, occupant or guest wilfully or negligently caused undue damage to the residential complex. I base this on the video of the sink clog and the estimate to repair unit 301 from the flood.

### **Compensation for damages**

19. Having found the Tenant, occupant or guest wilfully or negligently caused undue damage, I must now consider whether the Landlord's claim for compensation is reasonable. The estimate submitted into evidence identified the cost for labour and materials to repair the bathroom floor, ceiling, drywall, replace the electrical and fan in unit 301. The amount is \$10,692.68. The Landlord's application sought \$11,000.00 in compensation. The Landlord submitted that the estimate did not include any repairs for the Tenant's unit. Submitted into evidence were photographs of the rental unit, which showed a significant amount of refuse.
20. On a balance of probabilities, I find that the Landlord is entitled to \$10,692.68. I base this on the estimate from Roland Renovations. I do not find that the Landlord is entitled to \$11,000.00. While the Tenant's unit appeared to be in disarray in the photos, the damage at this point is speculative only. The Landlord may wish to file an L10 application after there has been an opportunity to assess the damage and receive evidence to support a claim for compensation for damages to the Tenant's unit.

## Relief from Eviction

21. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
22. Pursuant to section 83(6), I am required to consider whether the Landlord made attempts to negotiate a payment agreement with the Tenant. The Landlord testified that she contacted the Tenant several times regarding the arrears to sort out a repayment plan. However, the Tenant was unresponsive. I am satisfied that the Landlord attempted to negotiate a payment agreement with the Tenant.
23. With respect to section 83(2), the Landlord testified that she is paying for the insurance, municipal taxes and water bill herself due to the arrears, there was at least another leak in September 2022 and the tenants in unit 301 vacated their unit due to the leaks. In consideration of the foregoing, and the fact that the Tenant was not present to disclose any circumstances for me to consider delaying or denying eviction, relief will not be granted.

### 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 November 29, 2022.
2. If the unit is not vacated on or before November 29, 2022, then starting November 30, 2022, 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 November 30, 2022.
4. The Tenant shall also pay to the Landlord \$10,436.08. This amount represents arrears of rent less the deposit, the application filing fee and compensation for damages.
5. The Tenant shall also pay the Landlord compensation of \$52.60 per day for the use of the unit starting November 15, 2022 until the date the Tenant moves out of the unit.
6. If the Tenant does not pay the Landlord the full amount owing on or before November 29, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 30, 2022 at 3.00% annually on the balance outstanding.

**November 18, 2022**

**Date Issued**

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Camille Tancioco

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 May 31, 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**

Rent Owing to the date of the Hearing	\$8,039.40
Compensation for Damages	\$10,692.68
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$7,485.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$997.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$
<b>Total amount owing to the Landlord</b>	<b>\$10,436.08</b>
Plus daily compensation owing for each day of occupation starting November 15, 2022	\$52.60 (per day)

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