



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

Citation: WBH Queens Limited COB as Miller Apartments v Healey, 2022 ONLTB 9983

Date: 2022-11-07

File Number: LTB-L-003881-22

In the matter of: 3, 187 QUEEN ST
SARNIA ON N7T2R8

Between: WBH Queens Limited COB as Miller Apartments Landlord

And

Katelyn Healey Tenant

WBH Queens Limited COB as Miller Apartments (the 'Landlord') applied for an order to terminate the tenancy and evict Katelyn Healey (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 and,
- 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.

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 September 20, 2022.

Only the Landlord's Agent, Donna Smithson, and the Landlord's Legal Representative, David Ciabotaru, attended the hearing.

As of 11:30 a.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:

1. The Tenant was in possession of the rental unit on the date the application was filed.
2. The lawful monthly rent is \$681.50.

N5 Notice

3. The Landlord gave the Tenant an N5 Notice on December 12, 2021 with a termination date of January 11, 2022, alleging that a guest of the Tenant broke into the mailboxes of other residents, removed their contents, and damaged the mailboxes.
4. The Landlord's Agent testified that on the morning of December 9, 2021, the resident manager discovered damage to two mailboxes. The police were called and reviewed the video surveillance tapes. The tapes revealed two individuals exiting the Tenant's unit, and later, one of the individuals breaking into the two mailboxes in question, and removing their contents. The Landlord submitted screen shots of the video surveillance tapes into evidence.

Substantial Interference

5. The Landlord's Agent testified that neither the Tenant, an occupant, or guest of the Tenant engaged in the behaviour set out in the N5 Notice within seven days of the service of the N5 Notice. Therefore, the Tenant voided portion of the N5 Notice with respect to substantial interference. In accordance with s.64(3) of the *Residential Tenancies Act, 2006* (the Act).

Damage

6. Based on the evidence before me, I find that the Tenant did not repair the damage, pay the Landlord the reasonable costs to repair the damage or make arrangements satisfactory to the Landlord within seven days after receiving the N5 notice of termination. Therefore, the Tenant did not void the portion of the N5 notice of termination with respect to damage in accordance with section 62(3) of the *Residential Tenancies Act, 2006* (Act).
7. Based on the uncontested evidence before me, I find, on a balance of probabilities that an occupant or an individual who the Tenant permitted in the residential complex wilfully or negligently caused undue damage to the residential complex.

Compensation - Damage

8. The Landlord submitted an invoice in the amount of \$100.00, which included costs to replace the locks of \$40.00 per mailbox, and a \$20.00 charge for in-house labour. The Landlord did not submit an invoice for the purchase of the mailbox locks, and I do not have sufficient information to determine that \$40.00 is an appropriate cost for a lock. In-house labour is not an out-of-pocket cost to the Landlord and is therefore not recoverable from the Tenant.
9. Based on the evidence before me, I am unable to determine whether \$100.00 is the reasonable cost to replace the mailbox locks. Therefore, the Landlord is not entitled to \$100.00 for the replacement of the mailbox locks.

Daily compensation and rent deposit

10. Based on the monthly rent, the daily compensation is \$22.41 This amount is calculated as follows: \$681.50 x 12 months divided by 365 days.
11. At the hearing, the Landlord's Agent testified that, as of the hearing date, the Tenant had paid the rent to September 30, 2022, and as a result, the Landlord was not seeking daily compensation from the termination date in the N5 Notice.
12. The Landlord collected a rent deposit of \$681.50 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$5.81 is owing to the Tenant for the period from December 31, 2020 to September 20, 2022.

Relief from eviction

13. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Residential Tenancies Act, 2006 (the 'Act'), including the Landlord's Agent's testimony that since the N5 Notice was served, the Tenant has allowed individuals who are not their guests into the residential complex, allowed people to enter and exit the residential complex through the window of their unit, and made excessive noise to the point that other tenants have called the police. As the Tenant did not attend and no other circumstances were presented to me, I find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
14. This order contains all reasons for the determinations and order made. No further reasons will be issued.

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 18, 2022.
2. If the unit is not vacated on or before November 18, 2022, then starting November 19, 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 19, 2022.
4. The Landlord owes \$687.39 which is the amount of the rent deposit and interest on the rent deposit.
5. However, the Landlord is authorized to deduct from amount owing to the Tenant \$22.41 per day for compensation for the use of the unit starting November 8, 2022 to the date the Tenant moves out of the unit.
6. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

November 7, 2022
Date Issued

Kathleen Wells
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 May 19, 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.