



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

**Citation:** Charette v Millette, 2022 ONLTB 11308

**Date:** 2022-11-04

**File Number:** LTB-L-009110-22

**In the matter of:** B, 54 Kent  
Timmins ON P4N3B8

**Between:** Jody Charette, Luc Charette Landlord

**And**

Yvain Wilfred Millette Tenant

Jody Charette, Luc Charette (the 'Landlord') applied for an order to terminate the tenancy and evict Yvain Wilfred Millette (the 'Tenant') because:

- 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.

Jody Charette, Luc Charette (the 'Landlord') applied for an order requiring Yvain Wilfred Millette (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 2, 2022, at 9:00 A.M.

Only the Landlord's Legal Representative, Ms. Shelby Lalande, attended the hearing.

As of 10:05 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. 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 shall terminate on November 15, 2022, and the Tenant shall pay to the Landlord the sum of \$4,710.52 plus costs.
2. The Tenant was in possession of the rental unit on the date the application was filed.

First N5 Notice of Termination-Wilful or Negligent Damage

2022 ONLTB 11308 (CanLI)

3. On February 4, 2022, the Landlord gave the Tenant an N5 notice of termination with a termination date of February 24, 2022. The notice of termination contains the following allegations:
- On October 3, 2021, the Tenant broke into the rental unit and Police were contacted and attended. Damage was caused to the window and blind, both of which were replaced.
  - On November 19, 2021, the Tenant flushed food down the toilet, causing the toilet to back up and overflow. Damage to property, and ceiling damage occurred to the unit below.
  - On January 24, 2022, plumbing was removed by the Tenant in the kitchen, causing a water leak and ceiling damage to the unit below.
4. 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 N5 notice of termination in accordance with section 62(3) of the *Residential Tenancies Act, 2006* (Act).

#### Second N5 Notice of Termination

5. On July 27, 2022, the Landlord gave the Tenant a second N5 notice of termination, with a termination date of August 10, 2022. The notice of termination contains the following allegations:
- On July 16, 2022, the tenant below notified the Landlord that water damage was occurring in several ceiling locations from the Tenant's rental unit.
  - On July 16, 2022, the Tenant installed a washing machine and dryer in the kitchen area of the rental unit without the authorization of the Landlord. These appliances were not properly installed causing water damage a fire hazard.
  - On the same date the appliances were removed with the assistance of the Landlord and placed in the garage for storage.
  - The Tenant attempted to move the appliances back into the rental unit that same evening and police were contacted, who attended on July 19, 2022, and provided a verbal warning to the Tenant that mischief charges could be pending, if another attempt to move the appliances into the rental unit occurred again.

#### The Law and Analysis

6. Section 68 (1) of the Act states:

68 (1) A landlord may give a tenant notice of termination of the tenancy if,

(a) a notice of termination was given to the tenant under section 62, 64 or 67;  
and

(b) more than seven days but less than six months after the notice mentioned in clause (a) was given to the tenant, an activity takes place, conduct occurs

or a situation arises that constitutes grounds for a notice of termination under section 60, 61, 62, 64 or 67, other than an activity, conduct or a situation that is described in subsection 61 (1) and that involves an illegal act, trade, business or occupation described in clause 61 (2) (a).

[emphasis added]

34 The tenant is responsible for the repair of undue damage to the rental unit or residential complex caused by the wilful or negligent conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant..

7. The second N5 was served on July 27, 2022, with allegations of new inappropriate conduct from the Tenant, which took place more than 7-days and less than 6-months from the first N5. Based on the Tenant's conduct, and the evidence before the Board, the application from the Landlord can proceed, and I find the Tenant is in breach of the Act, and wilfully or negligently damaged the rental unit.

#### Compensation for damages and costs

8. 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's evidence showed the extensive ceiling damage, and plumbing fixtures that were tampered with by the Tenant, and invoices were also submitted.
9. The Landlord has incurred reasonable costs of \$4710.52 to repair the damage and/or replace property that was damaged and cannot be repaired.
10. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
11. There is no last month's rent deposit.

#### Relief from eviction

12. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

#### **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 15, 2022.

2. If the unit is not vacated on or before November 15, 2022, then starting November 16, 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 16, 2022.
4. The Tenant shall pay to the Landlord \$4,710.52, which represents the reasonable costs of repairing the damage and/or replacing the damaged property.
5. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
6. The total amount the Tenant owes the Landlord is \$4,896.52.
7. If the Tenant does not pay the Landlord the full amount owing on or before November 15, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 16, 2022 at 4.00% annually on the balance outstanding.

**November 4, 2022**

**Date Issued**

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Steven Mastoras

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 16, 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.