



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

Citation: Gauthier v Richardson, 2022 ONLTB 9824

Date: 2022-10-24

File Number: LTB-L-019331-22

In the matter of: 2, 407 NIAGARA ST
WELLAND ON L3C1L3

Between: Joel Gauthier, Justin Gauthier Landlords

And

Chris Rodrigue, Robert Richardson Tenants

Joel Gauthier and Justin Gauthier (the 'Landlords') applied for an order to terminate the tenancy and evict Chris Rodrigue and Robert Richardson (the 'Tenants') because:

- the Tenants, another occupant of the rental unit or a person the Tenants permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex;
- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully caused undue damage to the premises.

The Landlords also claimed compensation for each day the Tenants remained in the unit after the termination date.

The Landlords applied for an order requiring the Tenants to pay the Landlords' reasonable out-of-pocket costs the Landlords have incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex.

This application was heard by videoconference on July 12, 2022 and October 13, 2022.

The Landlord Joel Gauthier and the Landlord's Legal Representative J. Travis attended the hearing the hearing on October 13, 2022.

As of 9:51 a.m., the Tenants were not present or represented at the hearing on October 13, 2022 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 Landlords 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 will be terminated and the Tenants will be ordered to pay for the property that was damaged.

2. The Tenants were in possession of the rental unit on the date the application was filed.

N7 Notice of Termination

3. On April 1, 2022, the Landlords gave the Tenants an N7 notice of termination. The notice of termination contains the following allegations:
 - The Tenants' behaviour or the behaviour of someone visiting or living with them seriously impaired the safety of another person by: having excessive items in and around the unit and building and by blocking the fire escape and fire escape ladder with garbage and debris, rendering the fire escape unusable; by blocking the fire exit exterior door rendering it inoperable creating a safety hazard; by removing the smoke detector from the rental unit; and by storing their bikes improperly in a common area causing a trip and fall hazard; and
 - The Tenants or someone visiting or living with them have wilfully damaged the rental unit by damaging the bedroom hardwood floor due to pet urine causing \$3,000.00 of damage.

Serious Impairment of Safety

4. The Landlords' witness Wendy Gauthier ('WG') testified that she assists with the management of the rental unit and carries out the inspections of the unit for the Landlords. WG testified that she attended at the rental unit on March 16, 2022 and found the following issues in the unit:
 - The Tenants had excessive items stored in and around the rental unit causing clutter;
 - The smoke detector had been removed and in her conversation with the Tenants they advised they had removed the smoke detector;
 - The fire exit door was blocked with clutter and items rendering the door inoperable, prohibiting exit from the fire escape door; and
 - The fire escape on the exterior of the building, outside of the unit exterior unit door, was blocked by a mattress/futon, garbage bags and other items that rendered the fire escape and its ladder in accessible for exit from the building. (Photos Exhibit 1 & 2)
5. WG testified that she reattended the rental unit on March 20, 2022 and found the fire exit door still blocked by debris and the fire escape ladder was still blocked by debris. WG testified that the blocking of the fire exit and removal of the smoke detector created a fire and safety hazard for the Tenants and all other tenants in the building who would have to rely on that fire exit for safe exit from the building in case of emergency.

6. WG testified that as of June 2022 the Tenants have cleared the fire escape of the mattress and substantial garbage items but some garbage items could still be seen on the fire escape on occasion.
7. On the basis of the Landlords' uncontested evidence, I am satisfied that the Tenants' behaviour removing the smoke detector, blocking the internal unit access to the fire escape door, and blocking the fire escape and fire escape ladder has seriously impaired the safety of the Tenants and other tenants in the residential complex.
8. I am satisfied that the Landlords have met the burden of proof to establish that the Tenants seriously impaired the safety of a person in the residential complex and the act or omission occurred in the residential complex.

Undue Damage

9. WG testified that the hard wood flooring in the bedroom was saturated with dog urine, damaging the flooring and causing a strong odor through the unit. She testified that when she was in the unit on March 16, 2022 she witnessed a large dog in the Tenants' unit urinating on the floor in an area that was severely damaged by urine. She submitted into evidence pictures of the damage to the flooring and of the Tenant drying the urine of the dog off the floor while she was inspecting the unit. (Exhibit 3 photos)
10. WG testified that the bedroom hardwood floors were saturated with urine, the wood was blackened and had a strong odor making it impossible to repair the floor and requiring the floors in the bedroom to be replaced. She testified that she received a quote to remove the floors and have the hardwood replaced, with installation charges, of \$3,000.00.
11. Based on the Landlords' uncontested evidence, I find that the Tenants or a person permitted in the residential complex by the Tenants have wilfully or negligently caused undue damage to the rental unit bedroom flooring by permitting an animal to urinate on the floors.
12. The Landlords will incur reasonable costs of \$3,000.00 to replace property that was damaged and cannot be repaired.

Daily compensation

13. WG testified that the rent has been paid by the Tenants since the filing of the application and there are no arrears of rent. As such, daily compensation to the date of the hearing will not be ordered.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. The Landlord collected a rent deposit of \$875.00 from the Tenant and this deposit is still being held by the Landlord.
16. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

Relief from eviction

17. 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 Landlords and the Tenants is terminated. The Tenants must move out of the rental unit on or before November 4, 2022.
2. If the unit is not vacated on or before November 4, 2022, then starting November 5, 2022, the Landlords 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 Landlords on or after November 5, 2022.
4. The Tenants shall pay the Landlords compensation of \$28.77 per day for the use of the unit starting November 4, 2022 until the date the Tenants moves out of the unit.
5. The Tenants shall pay to the Landlords \$3,000.00, which represents the reasonable costs of replacing the damaged property.
6. The Tenants shall also pay to the Landlords \$186.00 for the cost of filing the application.
7. The total amount the Tenants owe the Landlords is \$4,186.00.
8. If the Tenants do not pay the Landlords the full amount owing on or before November 4, 2022, the Tenants will start to owe interest. This will be simple interest calculated from November 5, 2022 at 4.00% annually on the balance outstanding.

October 24, 2022
Date Issued

 Nicola Mulima
 Vice Chair, 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 5, 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.

