



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

Citation: Hilderley v Jones, 2022 ONLTB 9466

Date: 2022-10-24

File Number: LTB-L-043401-22

In the matter of: 10 Marshall Avenue
Ayr Ontario N0B1E0

Between: Brian Hilderley Landlord

And

Anthony Faiola, Lynda Jones Tenants

Brian Hilderley (the 'Landlord') applied for an order to terminate the tenancy and evict Anthony Faiola, Lynda Jones (the 'Tenan') because the Tenants did not pay the rent that the Tenants owe.

The Landlord also applied for an order to terminate the tenancy and evict 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.

This application was heard by videoconference on October 4, 2022. Only the Landlord attended the hearing. As of 9:32 a.m., the Tenants were 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.

Preliminary Issue:

1. At the hearing, the Landlord made a request to amend his L2 application to change the amount for compensation for damages. He stated that he discovered additional damages after the Tenants vacated.
2. Rule 15.4 of the Board's Rules of Procedure states that the Board may exercise its discretion to grant a request to amend an application made at the hearing if satisfied that the amendment is appropriate and would not prejudice any party and is consistent with a fair and expeditious proceeding.
3. As the Tenants did not attend the hearing, I do not find that the amendment would be prejudicial. Further, the Landlord submitted that the damage was only discovered after the Tenants vacated the unit. As such, the Landlord's request was granted, and I proceeded with the amended application.

2022 ONLTB 9466 (CanLI)

Determinations:

L1 Application

4. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants 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.
5. The Tenants were in possession of the rental unit on the date the application was filed.
6. The Tenants vacated the rental unit on June 30, 2022. Rent arrears are calculated up to the date the Tenants vacated the unit
7. The lawful rent is \$1,400.00. It was due on the 1st day of each month.
8. The Tenants have not made any payments since the application was filed.
9. The rent arrears owing to June 30, 2022 are \$9,100.00.
10. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
11. The Landlord collected a rent deposit of \$1,400.00 from the Tenants and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.
12. Interest on the rent deposit, in the amount of \$174.92 is owing to the Tenants for the period from March 2, 2014 to October 4, 2022.

L2 Application

13. As the Tenants vacated the unit, the Landlord's application for termination of the tenancy is moot. As such, the only remaining issue in the L2 application is compensation for damages.
14. The Landlord testified that when the Tenants vacated, they left a tremendous amount of furniture in the unit, large holes in the wall, 5 damaged doors, 3 smashed windows, coffee and spaghetti staining on the walls and ceiling, missing cabinet doors, large divots in the hardwood flooring, broken tiles in the bathroom, damaged fridge, smashed light switch plates, glass stovetop and ceiling lights. Submitted into evidence was photographs of the damage, with exception of the stovetop and ceiling lights.
15. Subsection 89(1) of the *Residential Tenancies Act, 2006* (the 'Act') states that a landlord may apply to the Board for an order requiring a tenant to pay reasonable costs that the landlord has incurred or will incur for the repair of or, where repairing is not reasonable, the replacement of damaged property, if the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex wilfully or negligently causes undue damage to the rental unit or the residential complex.

16. This wording means that a landlord must establish that it is more likely than not that the tenant, an occupant or a guest, wilfully or negligently caused each item of property damage claimed.
17. The language of subsection 89(1) requires damage to be undue. It is recognized that some damage will occur over the regular course of time, due to regular wear and tear in a residential complex. Reasonable wear and tear would not normally constitute “undue damage” (*Kamoo v. Brampton Caledon Housing Corp.* 2005 O.J. No. 3911).
18. On a balance of probabilities, I find that the Tenants wilfully or negligently caused undue damage to the rental unit as described by the Landlord. The damage as demonstrated in the photographs was so substantial that it could not be a result of reasonable wear and tear. Regarding the smashed stovetop and ceiling lights, the Landlord’s *viva voce* testimony was believable and credible. He was descriptive in his testimony, stating that the stovetop glass was irreparable, and he discovered shattered glass from the ceiling lights throughout the unit.
19. Having found that the Tenants caused undue damage, the remaining issue is whether the Landlord’s claim for compensation for damages is reasonable. The Landlord submitted into evidence multiple invoices for the damage, including window repair, door repair, stove replacement. The Landlord also testified that he paid an electrician who attended the unit to repair the ceiling lights. Based on the uncontested evidence of the Landlord, I find that the costs incurred were reasonable in the circumstances.
20. The Landlord also claimed compensation for garbage disposal bins. I am satisfied that the removal of the Tenants’ items had to be performed before repairs could be completed. As such, the cost of garbage removal is required in relation to the repairs in the unit. I am satisfied that the cost claimed for garbage removal is appropriate.
21. The Landlord also claimed compensation for using a moving truck to move the Tenants’ belongings to a storage unit and the cost to store the Tenants’ items. I do not find that these are damages within the meaning of subsection 89(1) of the Act. The Landlord’s application did not request compensation for damages pursuant to section 88.2 of the Act, and therefore, I could not consider his request.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated as of June 30, 2022, the date the Tenants moved out of the rental unit
2. The Tenants shall pay to the Landlord \$7,726.08. This amount includes rent arrears owing up to the date the Tenants moved out of the rental unit and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
3. The Tenants shall also pay to the Landlord \$4,328.16. This amount represents the reasonable costs of repairing the damage and/or replacing the damaged property.
4. The total amount the Tenants owe the Landlord is \$12,054.24.

5. If the Tenants do not pay the Landlord 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 3.00% annually on the balance outstanding.

October 24, 2022

Date Issued

Member, Landlord and Tenants Board

15 Grosvenor St, 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.

**Schedule 1
SUMMARY OF CALCULATIONS**

A. Amount the Tenants must pay as the tenancy is terminated

Rent Owing To Move Out Date	\$9,100.00
Application Filing Fee	\$201.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$1,400.00
Less the amount of the interest on the last month's rent deposit	- \$174.92
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$
Total amount owing to the Landlord	\$7,726.08