



**Order under Section 62 / 64 / 69 / 89
Residential Tenancies Act, 2006**

File Number: LTB-L-019963-24

In the matter of: BASEMENT ROOM 1, 42 SORAUREN AVE
TORONTO ON M6R2C7

Between: Kreshnik Xhakolli

And

Allan Davidson

I hereby certify this is a
true copy of an Order dated

OCT 4, 2024

Landlord and Tenant Board

Landlord

Tenant

Kreshnik Xhakolli (the 'Landlord') applied for an order to terminate the tenancy and evict Allan Davidson (the 'Tenant') because:

L1 Application:

- the Tenant did not pay the rent that the Tenant owes.

L2 Application:

- 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; and,
- the Tenant has been persistently late in paying the Tenant's rent.

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, which the Landlord alleges 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 August 29, 2024. The Landlord's Legal Representative, Dakota Kelly ('Representative'), the Landlord, Kreshnik Xhakolli ('KX'), and the Landlord's Witnesses, Sandy Ferry ('SF'), Kim Tran ('KT'), and Christopher Haggarty ('CH') attended the hearing.

As of 11:28 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.

It is determined that:

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 October 15, 2024, and the Tenant shall pay to the Landlord \$7,206.89.

L2 Application

N8 Notice of Termination for Persistent Late Payment

2. On February 12, 2024, the Landlord gave the Tenant an N8 notice of termination ('N8') for persistently paying their rent late.
3. The N8 alleges that the Tenant failed to pay their rent on time for a period of eight months over a thirteen-month period between February 1, 2023, through February 1, 2024.
4. Since the application was filed, the Tenant has not paid their rent on the date it becomes due.
5. Therefore, I find the Landlord has proven, on a balance of probabilities, that the Tenant has not paid their rent on time.

N5 Notice of Termination for Substantial Interference

6. On February 12, 2024, the Landlord gave the Tenant an N5 notice of termination ('N5') because the Tenant substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another Tenant, and the Tenant wilfully or negligently caused damage to the premises.
7. The Tenant did not stop the conduct or activity, nor repair or pay the Landlord's 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 s.62(3) and s.64(3) of the *Residential Tenancies Act, 2006* (Act).
8. The Landlord claims that the Tenant has:
 - damaged the exterior of the rental complex and the security camera; and,
 - disturbed the quiet enjoyment of the other tenants.
9. The Landlord testified that the rental complex consists of four units. In the basement level, where the Tenant resides, he rents a room and shares a kitchen and bathroom with SF.
10. The Tenant damaged the stucco exterior of the rental complex by hitting it repeatedly with a brick. In support of this allegation, the Landlord submitted video evidence recorded at 10:20 a.m. on August 14, 2023, which shows the Tenant hitting the exterior of the building with a brick. A photograph of the damage taken August 14, 2023, was submitted into evidence. The stucco shows a dent which appears to be four inches long and is consistent with the shape of a brick.

11. The Landlord submits that he an experienced home builder. As such, he is familiar with how stucco exteriors are applied to homes and says that a small area of stucco cannot be repaired. He explained stucco is applied in large areas and is done all at one time so that the finish is consistent. If a small repair is attempted, it will not match the remainder of the wall. It is his evidence that these sections are usually 10 x 15 feet, and to refinish that section is estimated to cost \$2,000.00. He says there are additional dents in the stucco where the Tenant has hit the house, but that he did not include those in his claim.
12. The Landlord has proven the reasonable costs that the Landlord has incurred or will incur as a result of the damage. I accept the Landlord's uncontested evidence with regard to the expense and method necessary to repair the side of the house. Therefore, an order for \$2,000.00 shall issue.
13. The Landlord also testified that the Tenant damaged the security cameras. Two videos of the Tenant were submitted. The first, taken October 17, 2023; the second taken December 5, 2023. Both show the Tenant tampering with the camera system. A photo was submitted into evidence of the camera lying on the ground. The Landlord was alerted the system was no longer recording and found the wires damaged beyond repair.
14. The Landlord provided a copy of the receipt for the camera system. The purchase of this system was \$254.88.
15. The Landlord has proven on a balance of probabilities that the Tenant damaged the camera system and that it must be replaced. Therefore, an order for \$254.88 shall issue.
16. The Landlord also seeks to terminate the tenancy based on the Tenant's behaviour. In addition to the evidence pertaining to the damage, he told the Board that the Tenant frequently disturbs the quiet enjoyment of the other tenants. In evidence were several videos showing the Tenant disturbing the other tenants including taunting them, using racial slurs, yelling, and knocking on other Tenant's doors and walls late at night.
17. SF testified she shares a kitchen and bathroom with the Tenant. She is 69 years old and is retired. She says the Tenant often bangs on the bathroom wall which shares a wall with her bedroom. SF testified that the Tenant makes verbal threats towards her, and she has had to call the police on several occasions.
18. SF states that this has caused her to lose sleep so frequently that she takes naps so that she can have an adequate amount of rest.
19. KT testified that she is the girlfriend of the tenant, CH, who lives above the Tenant's unit. It was her evidence that she has called the police and bylaw because of the noise caused by the Tenant.
20. CH lives above the Tenant. He says he has experienced the Tenant banging on the exterior walls to his unit on multiple occasions and frequently at 2, 3, or 4 a.m. CH tells the Board that he believes the Tenant does this as an act of retaliation. He says that the Tenant stays out late every night and when CH and KT walk around their unit during the daytime, they have woken him up. Because of this, CH says, the Tenant goes out of his way to interfere with CH and KT's sleep.

21. CH continues that the Tenant has challenged him to “come outside” so the Tenant could beat CH up. On another occasion, a video shows the Tenant knocking on CH’s walls. The police attend and after they leave, the Tenant is heard saying “What are you going to do?”. CH says this was the Tenant taunting him that CH and the police were powerless to stop him from persisting in this behaviour.
22. CH told the Board that this continued behaviour has made him feel unsafe. He says he’s lost work because he cannot get a proper nights’ sleep. He told the Board that he and KT do not use their kitchen anymore because they are afraid of “setting him off.” CH has tried to mitigate the noise to make it quieter for the Tenant. For example, laying carpeting to minimize noise transfer. But CH states that despite their attempts, the Tenant’s behaviour has continued to escalate.
23. In my view, a reasonable Tenant knows or ought to know that it is inappropriate to intentionally disturb the other tenants because they are frustrated. Further, causing ongoing disturbances often resulting in police involvement, is not a reasonable way to deal with frustration.
24. The Landlord has proven, on a balance of probabilities, that the Tenant has substantially interfered with the lawful rights and privileges of the Landlord and disturbed the quiet enjoyment of the neighbouring tenants.
25. Therefore, the tenancy shall terminate effective October 15, 2024.

L1 Application

26. 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.
27. As of the hearing date, the Tenant was still in possession of the rental unit.
28. The lawful rent is \$700.00. It is due on the 1st day of each month.
29. Based on the Monthly rent, the daily rent/compensation is \$23.01. This amount is calculated as follows: $\$700.00 \times 12$, divided by 365 days.
30. The Tenant has not made any payments since the application was filed.
31. The rent arrears owing to August 31, 2024, are \$6,300.00.
32. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
33. The Landlord collected a rent deposit of \$700.00 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.
34. Interest on the rent deposit, in the amount of \$50.64 is owing to the Tenant for the period from April 1, 2021, to August 29, 2024.

Relief From Eviction

35. 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 not be unfair to grant relief from eviction pursuant to subsection 83(1)(a) of the Act. The Landlord is not aware of any reason to delay or deny an eviction and seeks an expedited order pursuant to s.84 of the Act, which states:

Subject to clause 83 (1) (b), the Board shall, in an order made under section 69 based on a notice given under subsection 61(1) that involves an illegal act, trade, business or occupation described in clause 61(2)(a) or based on a notice given under section 63, 65 or 66, request that the sheriff expedite the enforcement of the order.

36. The requirements of the provision found under s. 84 are not met. The notices given to the Tenant were pursuant to subsections 59, 62, 64, and 69.
37. The Tenant's behaviour has interfered with the other occupants in the building and the Landlord and have persisted over a long period of time. Therefore, I find a standard order – that being 11 days from the issuance of this Order – is appropriate in the circumstances.
38. As noted, the Tenant did not attend the hearing of this matter and thus, I did not have the opportunity to hear their evidence regarding their circumstances or to dispute the Landlord's application for an eviction order.

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 October 15, 2024.
2. The Tenant shall pay to the Landlord \$5,702.65. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the rental arrears owing.
3. The Tenant shall also pay the Landlord compensation of \$23.01 per day for the use of the unit starting August 30, 2024, until the date the Tenant moves out of the unit.
4. The Tenant shall pay to the Landlord \$2,254.88, which represents the reasonable costs of repairing the damaged property.
5. The Landlord owes \$750.64 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Tenant.
6. The total amount the Tenant owes the Landlord is \$7,206.89.
7. If the Tenant does not pay the Landlord the full amount owing on or before October 15, 2024, the Tenant will start to owe interest. This will be simple interest calculated from October 16, 2024, at 7.00% annually on the balance outstanding.

8. If the unit is not vacated on or before October 15, 2024, then starting October 16, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. 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 October 16, 2024.

October 4, 2024
Date Issued


 Jane Dean
 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 April 16, 2025 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.

Amount of Rental Arrears Tenant must pay

Rent Owing To Hearing Date	\$6,267.29
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$700.00
Less the amount of the interest on the last month's rent deposit	- \$50.64
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Total amount owing to the Landlord	\$5,702.65
Plus daily compensation owing for each day of occupation starting August 30, 2024	\$23.01 (per day)