



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

File Number: LTB-L-015780-24

In the matter of: 2163 Grainger Loop
INNISFIL ON L9S4J1

Between: Saira Malik
Zubair Ahmad

And

Razmik Safarian
Patricia Safarian

I hereby certify this is a
true copy of an Order dated
Dec 20, 2024

Landlord and Tenant Board

Landlords

Tenants

Saira Malik and Zubair Ahmad (the 'Landlords') applied for an order (L1 application) to terminate the tenancy and evict Razmik Safarian and Patricia Safarian (the 'Tenants') because the Tenants did not pay the rent that the Tenants' owe. The Landlords also applied for an order (L2 application) to terminate the tenancy because:

- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully or negligently caused damage to the premises

The Landlords also 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 September 23, 2024.

The first named Landlord, Saira Malik ('SM'), the Tenants' Legal Representative, Eric Sabbah, and the second named Tenant, Patricia Safarian ('PS'), attended the hearing.

Preliminary issue:

Monetary Jurisdiction

1. On the outset of the hearing, I raised a preliminary issue that the Board's monetary jurisdiction is \$35,000 in accordance with section 207 of the Act. Section 207(3) of the *Residential Tenancies Act, 2006* ('the Act') states, "If a party makes a claim in an application for payment of a sum equal to or less than the Board's monetary jurisdiction, all rights of the party in excess of the Board's monetary jurisdiction are extinguished once the Board issues its order". The amount in excess of the \$35,000.00, therefore is extinguished.

2. The Landlords testified that they understood the monetary jurisdiction of the Board and agreed that if they proceeded with their application their claim will be limited in accordance with the Act.
3. The Landlords said they would like to proceed and requested an order for termination of the tenancy. I was satisfied that the Landlords understood the consequences of their decision to proceed before the Board.

Determinations:

L1 application – non-payment of rent

4. The Landlords 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. As of the hearing date, the Tenants were still in possession of the rental unit.
6. The lawful rent is \$3,100.00. It is due on the 15th day of each month.
7. Based on the Monthly rent, the daily rent/compensation is \$101.92. This amount is calculated as follows: \$3,100.00 x 12, divided by 365 days.
8. The Tenants have not made any payments since the application was filed.
9. The rent arrears owing to October 14, 2024 are \$27,900.00.
10. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
11. The Landlords collected a rent deposit of \$3,100.00 from the Tenants and this deposit is still being held by the Landlords. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.

L2 application – willful and negligent damage and compensation for damages

12. On February 10, 2024, the Landlords gave the Tenant an N5 notice of termination. The notice of termination alleges that the Tenants scratched the hardwood floors in the bedroom and living room when they moved into the rental unit on or around October 15, 2023.
13. The Landlords provided photos of the scratched floors in the living room to support their testimony [D4 and D3]. The photos were taken by the Landlord, Zubair Ahmad, who was not present at the hearing.
14. On an N5 Notice of Termination, a tenant is afforded the opportunity to void the notice by repairing the damaged flooring or paying the amount to the Landlords to repair or replaced the damaged flooring within seven days of being served with the N5 notice. In this particular case, the voiding period was from February 10, 2024 to February 17, 2024.

15. The Tenants did not deny that the floors were surface scratched on their move-in day. PS testified that she bought a hardwood floor repairing kit and corrected the problems by lightly sanding and buffing the specific areas in the bedroom and living room within the time period set out in the first N5 notice of termination. PS said she emailed the Landlord on February 16, 2024 to notify them of the repair completed on February 15, 2024, and requested that they come to the rental unit to inspect the flooring. It was uncontested that the Landlords did not inspect the unit until approximately April 5, 2024. The Tenants provided photos of the repaired flooring to support her testimony.
16. SM testified that the flooring was not repaired, however, she said she was only in the unit once on April 5, 2024, for another reason, and was unable to confirm if the issue was corrected. She said it was her husband to last enter the rental unit in the summer and he did not attend the hearing. The Landlords did not provide any documentary evidence that the floor was not repaired on February 16, 2024, the date the Tenants sent the email to the Landlords letting them know about the repair.
17. In the L2 application, the Landlords were requesting a claim for reasonable costs of \$14,720.00 to repair the damage or replace property that was damaged and cannot be repaired due to the damaged hardwood flooring caused by the Tenants. At the hearing, the Landlords requested to lower the claim at the hearing to \$5,000.00 because they were aware of the monetary jurisdiction of the LTB. The Landlords said they sent the photos of the damaged flooring to their real estate agent, and they sent the photos to a professional for flooring company for an estimate. They said they did not have a professional attend the property to inspect the floors for an assessment.

Analysis

18. Section 62 of the Act states:

62 (1) A landlord may give a tenant notice of termination of the tenancy 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. 2006, c. 17, s. 62 (1).

(2) A notice of termination under this section shall,

- (a) provide a termination date not earlier than the 20th day after the notice is given;
- (b) set out the grounds for termination; and
- (c) require the tenant, within seven days,
 - (i) to repair the damaged property or pay to the landlord the reasonable costs of repairing the damaged property, or

(ii) to repair the damaged property or pay to the landlord the reasonable costs of repairing the damaged property, or
[Emphasis added]

(iii) to replace the damaged property or pay to the landlord the reasonable costs of replacing the damaged property, if it is not reasonable to repair the damaged property.

(3) The notice of termination under this section is void if the tenant, within seven days after receiving the notice, complies with the requirement referred to in clause 2

(2) (c) or makes arrangements satisfactory to the landlord to comply with that requirement.

19. The Tenants did not dispute that their moving into the rental resulted in the hardwood floors having surface scratches in the bedroom and living room areas. They also said that upon receiving the N5 notice, they immediately responded by purchasing a hardwood floor repair kit and lightly sanding the buffing the areas and asked the to inspect the area to ensure that the work was satisfactory, and they have complied to the N5 notice. The parties agreed that the Landlords never inspected the hardwood floors after receiving the email from the Tenants and within the 7-day voiding period. The Landlord's wife admitted that she was not in the rental unit until April and did not see the damages areas in question or if they were repaired or not.
20. On an application to the Board, the person who alleges a particular event occurred has the burden of proof to establish that it is more likely than not that their version of events is true. In this application, the burden lies on the Landlords to establish that the Tenants did not void the N5 notice of termination within the 7-day voiding period, and that the damage to the hardwood floors still exists as a result of the Tenants' willful or negligent conduct, in order to be successful with a claim for compensation.
21. Based on the submissions of the parties, I find that, on a balance of probabilities, that the Tenants repaired the damage within seven days after receiving the N5 notice of termination by using a purchased hardwood floor repair kit and repairing the flooring by lightly sanding and buffing the area and provided photos to support their testimony. I accept the evidence of the Tenants that the floors were repaired on or around February 16, 2024. The Landlords were unable to provide photos to show that the flooring was not repaired, and the Landlord present did not have personal knowledge of whether the floor was repaired or not either within the voiding period or up to the date of the hearing.
22. Therefore, I find that Tenant voided the N5 notice of termination in accordance with section 62(3) of the Act. Due to the Tenants voiding the N5 notice of termination, the Landlord cannot proceed with termination of the tenancy on the L2 application.
23. I also I find that, on a balance of probabilities, that the Landlords have not proven that there was damage to the hardwood flooring still existed after the Tenants repaired it on February 15, 2024.
24. Therefore, the Landlords' claim for reasonable costs due to the damaged floors is dismissed.

Relief from eviction

25. The Tenants testified that they have experienced financial hardship and have not been able to pay the rent due to extensive medical issues with her husband and has mobility issues. She said her husband has had 2 strokes in the past year and will have 2 medical appointments in October, consisting of an MRI on October 22, 2024, and another appointment at the stoke clinic on October 28, 2024. The Tenants submitted that their mother is elderly at 91 years old and the wife cares for both her mother and her husband. She said she is the only one who can prepare for the move, and it will take time to pack. They requested requested an extension of the termination of the tenancy of 60 days to find suitable housing.
26. The Landlords opposed any further relief and requested an order to terminate the tenancy due to the amount of arrears owing. The Landlord said the Tenants have not made any payments since the application was filed.
27. Based on the evidence and submissions before me, I find that the Tenants' request is reasonable and that a delay of eviction would be reasonable in these circumstances as the this will permit the Tenants to pay the arrears or additional time to find suitable housing. The Tenants' family also has significant physical challenges, and the delay of eviction will allow the Tenants more time to prepare to move.
28. Taking into account the date of the hearing and the issuance of the order, I find that there has been significant time for the Tenants to find alternative housing and as a result no further delay will be granted.
29. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The Tenant has had since January 31, 2024 to find alternative housing and will have until January 3, 2025 (being 12 months) to find alternative housing. Taking into account the amount of arrears, I find a further delay would not be reasonable.

It is ordered that:

L2 Application:

1. The Landlords' L2 application is dismissed.

L1 Application

2. The tenancy between the Landlords and the Tenants is terminated unless the Tenants void this order.
3. **The Tenants may void this order and continue the tenancy by paying to the Landlords or to the LTB in trust:**

- \$37,386.00 if the payment is made on or before January 3, 2025. See Schedule 1 for the calculation of the amount owing.
4. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after January 3, 2025 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
 5. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before January 3, 2025.**
 6. If the Tenants do not void the order, the Tenants shall pay to the Landlords \$22,803.28. 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 Landlords owe on the rent deposit are deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
 7. The Tenants shall also pay the Landlords compensation of \$101.92 per day for the use of the unit starting September 24, 2024 until the date the Tenants move out of the unit.
 8. If the Tenants do not pay the Landlords the full amount owing on or before January 3, 2025, the Tenant will start to owe interest. This will be simple interest calculated from January 4, 2025 at 6.00% annually on the balance outstanding.
 9. If the unit is not vacated on or before January 3, 2025, then starting January 4, 2025, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
 10. 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 January 4, 2025.

December 20, 2024
Date Issued



Colette Myers
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 expires on July 4, 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.

**Schedule 1
SUMMARY OF CALCULATIONS**

A. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before January 3, 2025

Rent Owing To January 14, 2025	\$37,200.00
Application Filing Fee	\$186.00
Total the Tenant must pay to continue the tenancy	\$37,386.00

B. Amount the Tenants must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$25,717.28
Application Filing Fee	\$186.00
Less the amount of the last month's rent deposit	- \$3,100.00
Total amount owing to the Landlord	\$22,803.28
Plus daily compensation owing for each day of occupation starting September 24, 2024	\$101.92 (per day)