

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

**File Number:** NOL-10401-12

WM (the 'Landlord') applied for an order to terminate the tenancy and evict JA (the 'Tenant') because he, another occupant of the rental unit or someone he permitted in the residential complex has wilfully or negligently caused undue damage to the premises and because the Tenant has been persistently late paying the rent. The Landlord has also applied for an order requiring the Tenant to compensate the Landlord for the damage. The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard in Sudbury over two days on December 11, 2012 and January 3, 2013.

The Landlord and the Tenant attended the hearing on December 11, 2012. Also attending on that date were CG and SM as witnesses for the Landlord. Only the Landlord was present at the completion of the hearing on January 3, 2013.

The hearing was adjourned by the member on December 11, 2012 for the Landlord to re-inspect the rental unit for the repairs done by the Tenant and for the Tenant to obtain evidence, photographs, to support his testimony.

At the hearing on December 11, 2012 the Tenant withdrew his application NOT-10405-12.

**Determinations:**

**N5 – Wilful or negligent Damage**

1. The Tenant was given a first Notice of Termination under section 62 of the Residential Tenancies Act, 2006 (the 'Act'). This notice was not voided by the Tenant within the time period set out in the notice. Serving a second Notice of Termination was not permissible pursuant to Section 67 of the Act.
2. The Landlord's application was commenced within 30 days of the termination date in the first Notice of Termination (Form N5) and is therefore permitted under Section 69(2) of the Act.
3. The tenancy agreement dated April 10, 2011 provides in paragraph 7 that there be no smoking in the rental unit. (*Landlord Exhibit #1*)
4. The Landlord inspected the rental unit in October and November, 2012 and noted the smell of smoke, either tobacco or marijuana. CG, while assisting the Landlord with repairs also noted the presence of smoke.

5. The Tenant is smoking and/or is allowing his guests to smoke (cigarettes and/or marijuana) in the rental unit. (*Landlord Exhibits #14 & 15*)
6. The smoking has damaged the walls and ceilings of the rental unit requiring it to be professional cleaned and repainted. The Landlord's estimate of time and cost of paint is reasonable in the circumstances. (*Landlord Exhibits #14*)
7. Section 33 of the Act provides that a tenant is responsible for ordinary cleanliness of the rental unit and Section 34 provides a tenant is responsible for the repair of undue damage to the rental unit cause by their wilful or negligent conduct.
8. After service of the first notice of termination (Form N5) the Landlord noted additional damage including the following:
  - Floors marked with roofing tar (*Landlord Exhibits #13*)
  - Hole in ceiling due to installation of boxing bag (*Landlord Exhibits #16*)
  - Bath surround not properly cleaned regularly (*Landlord Exhibits #12*)
  - Fridge door dented (*Landlord Exhibits #6*)
9. The Tenant is employed as a roofer. He testified he removes his work clothes at the entrance of the rental unit but some tar enters the rental unit. He also testified he had cleaned the floors.
10. The Tenant testified he would remove the boxing bag and repair the ceiling. He denied denting the fridge.
11. The fridge door is dented. There is no evidence that the damage to the door was present prior to the Tenant's tenancy.
12. After the adjournment the Landlord re-inspected the unit to verify the work done by the Tenant.
13. The Tenant did not appear at the reconvened hearing and the photographs taken by the Landlord on December 19, 2012 and January 2, 2013 show that the floors are covered with spots of tar and the ceiling unchanged.
14. Additional photographs of the walls and bathroom fixtures confirm the Landlord's evidence regarding the poor state of cleanliness of the rental unit. The Landlord noted additional damage including a broken window in the bathroom and missing screen.
15. The Tenant has wilfully or negligently caused undue damage to the rental unit.
16. The Landlord will incur costs of \$2,758.35 to repair the damage:
  - Cleaning (Service Master quote) \$ 774.28

- Repair of bedroom ceiling (A. Toppazzini quote) \$ 847.50
- Painting of walls & ceilings \$ 550.00
- Fridge door (The Parts Store & McNeice & Smith) \$ 482.41
- Bathroom window (Cosmos Glass) \$ 104.16
- Total \$2,758.35
- (Landlord Exhibits #3, #17, #7 & #8, and #19)

**N8 – Persistent Late Payment of Rent**

17. The Tenant has been persistently late paying the rent. During the entire term of the tenancy from April 2011 the Tenant has paid the rent on time twice. The Landlord served two termination notices for non-payment of rent in the past four months. (Landlord Exhibit #9)
18. The Tenant has not paid the rent for the months of December and January.
19. The Landlord collected a rent deposit of \$825.00 from the Tenant and this deposit is still being held by the Landlord.
20. Interest on the rent deposit is owing to the Tenant for the period from May 20, 2011 to December 31, 2012
21. 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, as of January 25, 2013. The Tenant must move out of the rental unit on or before January 22, 2013.
2. The Tenant shall pay to the Landlord \$2,271.53 which represents the reasonable costs of repairing the damage and compensation for the use of the unit from January 1, 2013 to January 14, 2013 less the amount of the rent deposit and the interest owing on the deposit.
3. The Tenant shall also pay to the Landlord \$27.12 per day for compensation for the use of the unit from January 15, 2013 to the date he moves out of the unit.

4. If the Tenant does not pay the Landlord the full amount owing on or before January 25, 2013, he will start to owe interest. This will be simple interest calculated from January 26, 2013 at 3.00% annually on the balance outstanding.
5. If the unit is not vacated on or before January 25, 2013, then starting January 26, 2013, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. 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 January 26, 2013.

**January 11, 2013**  
**Date Issued**

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Lisa Stevens  
Member, Landlord and Tenant Board

Northern-RO  
199 Larch Street, Provincial Building, Suite 301  
Sudbury ON P3E5P9

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 26, 2013 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.