



Order under section 69
Residential Tenancies Act, 2006

File Number: SOL-61234-15

In the matter of: 94 ATHENIA DRIVE
STONEY CREEK ON L8J1S8

Between: Olumuyiwa Esho

Landlord

and
Antonio Amaral
Lucy Mosca

Tenants

I certify this is a true copy of the Order/Report.
Dated: 31/08/15 Landlord and Tenant Board

Olumuyiwa Esho (OE) (the 'Landlord') applied for an order to terminate the tenancy and evict Lucy Mosca (LM) and Antonio Amaral (AA) (the 'Tenants') (1) because the Tenants did not pay the rent that they owe and (2) because they, another occupant of the rental unit or someone they permitted in the residential complex have wilfully or negligently caused undue damage to the premises.

The Landlord has also applied for an order requiring the Tenants to compensate him for the damage and claimed NSF cheque charges and related administration charges.

This application was heard in Hamilton on July 30, 2015. Jane Stark-Perez (JS-P), legal representative, appeared for the Landlord. The Tenants attended the hearing with their legal representative, Edwin Alexander (EA).

Determinations:

1. At the outset of the hearing the Tenants' representative requested an adjournment claiming that he was hired only very recently and did not have time to prepare. JS-P opposed stating that the Tenants are trying to remain in the house without paying rent.
2. I questioned the female Tenant as to how much rent they owe and she agreed that the amount was \$3,600.00. I also questioned LM why they did not seek legal advice since June 15, 2015 when the notice of termination was given. The Tenant was not able to respond.
3. I agreed to adjourn the hearing on condition that to show their good faith, the Tenants pay to the Board \$3,000.00 on the day of the hearing. The Tenants refused to pay any rent and therefore the hearing proceeded.
4. Regarding the first issue, EA questioned the legality of rent claimed in the application. He stated that the 2013 rent was not \$1,600.00 as established in the lease (or \$1,628.80 as shown in the application) but \$1,200.00 because of paragraph 3 of the "option to

purchase agreement" of February 25, 2013. That agreement was signed at the same time as the lease but both are separate documents.

5. I examined the documents and I am not able to accept EA's interpretation of paragraph 3 - that once the Tenants do not meet the conditions in which \$400.00 of the rent is applied towards the purchase of the house, the rent then changes and is reduced by that amount.
6. I believe that these are two separate contracts and I have no jurisdiction to interfere with the option to purchase agreement. The Board does have jurisdiction over the lease and I accepted that the monthly rent to which the Landlord is entitled is as shown in the notice of termination and in the application.
7. The Tenants have not paid the total rent they were required to pay for the period from December 1, 2013 to July 31, 2015. Because of the arrears, the Landlord served a notice of termination effective June 29, 2015.
8. The Landlord is also entitled to \$140.00 to reimburse him/her for charges incurred as a result of cheques tendered by or on behalf of the Tenants which were returned NSF and related administration charges.
9. Apart from challenging the rent, EA did not provide any evidence as to the amount of the arrears claimed.
10. As to the second ground, EA raised the issue of whether JS-P may testify as a witness regarding damage. He drew a distinction between the role of an agent in a non-payment of rent application and in one where damage is concerned, as the evidence in the second situation may be hearsay.
11. I could not accept EA's challenge. The **Statutory Powers Procedure Act**, under which this Board operates, in subsection 15(1) allows all types of evidence, including hearsay, to be accepted. The role of a legal representative as both an advocate and a witness is also discussed in the Boards Rule of Practice R32 which suggests - and I agree with this position - that there is no conflict.
12. The male Tenant testified that in early March 2015 there was a flooding of the first floor and the basement which resulted in significant damage in the basement. Water was up to his knees and carpet, drywall, flooring in living room and kitchen cabinets were all effected.
13. The Tenant stated that he did not notify the Landlord but repaired the pipe himself rather than employ a professional plumber. AA agreed with the Landlord's representative that at the time the house was not being heated but denied that the bursting pipe was due to it freezing in an unheated kitchen.
14. There was evidence that the Landlord was notified by the Tenants about the issue a month after the flooding and that twice the Tenants did not permit a professional hired by

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the Landlord to inspect the house, establish the extent of the damage and carry out the work.

15. Apart from confirming that flooding occurred, AA's testimony was of little use. His memory was poor, his recollection of events from five months' ago minimal and no documentary evidence, such as photographs, was available.
16. JS-P's position was that the damage caused by the Tenants amounts to \$15,000.00 although apart from the Tenants no-one saw the inside of the house since March 2015. EA did not provide any evidence as to the quantum the damage.
17. The Tenants in effect supported the Landlord's case. By hiding the extent of the damage from the Landlord they also contributed to further deterioration of the property. As to the quantum of compensation sought I find \$15,000.00 to be unreasonably high. On the balance of probabilities I am prepared to recognize damage in the amount of \$7,500.00 which would be more typical in such cases.
18. 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 is terminated and the Tenants must move out of the rental unit on or before August 31, 2015.
2. The Tenants shall pay to the Landlord \$8,768.40, which represents the amount of rent owing up to August 31, 2015, the total charges related to NSF cheques and the cost of the application.
3. If the Tenants do not vacate the rental unit in accordance with paragraph 1 above, they shall also pay to the Landlord \$53.54 per day for compensation for the use of the unit starting September 1, 2015 to the date they move out.
4. The Tenants shall also pay to the Landlord \$7,500.00 for the cost of repairing the damage to the house.
5. The total amount which the Tenants shall pay to the Landlord is \$16,268.40.
6. If the Tenants do not pay the Landlord the full amount owing on or before September 15, 2015, the Tenants will start to owe interest. This will be simple interest calculated from September 16, 2015 at 2.00% annually on the balance outstanding.
7. The Landlord may file this order with the Court Enforcement Office (Sheriff) immediately but the eviction may be enforced only on or after September 1, 2015.

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The Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord, on or after September 1, 2015.

August 13, 2015
Date Issued


Karol Wronecki
Member, Landlord and Tenant Board

Southern-RO
119 King Street West, 6th Floor
Hamilton ON L8P4Y7

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 March 1, 2016 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.

Ph: S
Lan: S
First: O
Last: E
Comm:
Street: 2 4
Unit/Ap:
Pay Pho: 4 1
Mail Ad: Y