



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

Citation: Totino v Amirbekyan, 2024 ONLTB 15526

Date: 2024-03-13

File Number: LTB-L-039426-23

In the matter of: 1511, 78 TECUMSETH ST
TORONTO ON M5V0A9

I hereby certify this is a
true copy of an Order dated
MAR 13, 2024
Landlord and Tenant Board

Between: Vince Totino

Landlord

And

Hayk Amirbekyan

Tenant

Vince Totino (the 'Landlord') applied for an order to terminate the tenancy and evict Hayk Amirbekyan (the 'Tenant') because 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.

Vince Totino (the 'Landlord') also applied for an order requiring Hayk Amirbekyan (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. The damage 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 February 15, 2024.

The Landlord and the Tenant attended the hearing.

Determinations:

Preliminary Issue

1. The Landlord requested to amend their claim to seek increased damages as the estimate initially provided had been updated by an insurance quote. The original claim for damages by the Landlord was in the amount of \$4,700.00. The new quote estimates damages at \$27,925.49.
2. The Board's Guideline 15 on amending applications requires the requestor to make the amendment request as follows:
 - a) in writing;
 - b) served with the amended application to all other parties; and

c) filed with LTB with the amended application and a completed Certificate of Service.

The Guideline under 15.3 states:

The request to amend will be decided at the hearing after considering:

- a) whether the amendment was requested as soon as the need for it was known;
 - b) any prejudice a party may experience as a result of the amendment;
 - c) whether the amendment is significant enough to warrant any delay that may be caused by the amendment;
 - d) whether the amendment is necessary and was requested in good faith; and e) any other relevant factors.
3. The amendment request was made in writing by the Landlord on June 28, 2023 and acknowledged to be received by the Tenant. The Tenant opposed the amendment as he stated the amount was “ridiculous” and denied knowing about the request until the date of the hearing.
 4. I find that the Landlord has substantially complied with the requirements for amendments.
 5. It was learned at the hearing that the Tenant vacated the rental unit on October 6, 2023 making the Landlord’s claim for termination moot.
 6. As the Landlord’s claim is proceeding only on the claim for damages under s. 89, the Application can be amended. The Tenant has not articulated sufficient prejudice to warrant a denial of the amendment request.
 7. As explained below, the Landlord has proven on a balance of probabilities the claim for compensation in the application. Therefore, the Tenant shall be ordered to pay the Landlord \$2,634.63.
 8. The Tenant was in possession of the rental unit on the date the application was filed.
 9. The Tenant vacated the rental unit on October 6, 2023.

Compensation for damages

10. The Landlord claims that the Tenant or their occupant or guest wilfully or negligently caused undue damage to the rental unit or residential complex. The Landlord alleges various damage, including damage to the walls and blinds, water damage, and damage to blinds, cabinets, flooring, and baseboards.
11. This claim is brought pursuant to subsection 89(1) of the Act which says:

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 and the tenant is in possession of the rental unit. [Emphasis added.]

12. In order to succeed on an application for damage under s. 89(1) the Landlord must lead evidence in support of the proposition that the damage complained of was caused deliberately (wilfully) by the Tenants, an occupant or a guest behaving in a manner that falls below the standard of the reasonable person (negligently).

Damage to the walls and blinds

13. The Tenant candidly acknowledged responsibility for damages caused by shooting the bow and arrow inside the rental unit, saying that is the only thing he feels responsible for. Later in his testimony he also acknowledged that despite 3 blind panels in the unit already being broken, he caused further damage to another 4. I am satisfied based on the Tenant's admission that he wilfully or negligently caused undue damage to the rental unit's walls as well as four of the blind panels.
14. The original estimate provided by the Landlord quoted a price of \$4,700.00 to repair all damages to the unit.
15. The updated insurance quote shows replacement blinds costing \$945.80, with installation at \$601.48. Drywall repair is listed on the quote under the category "DRY", and these amounts total \$1,087.35.
16. Accordingly, I am satisfied on a balance of probabilities that the Landlord will incur reasonable costs of \$2,634.63 to repair the undue damage caused by the Tenant.

Other damage

17. The Landlord testified that the Tenant caused water damage and damage to cabinets, flooring, and baseboards. They presented at least 15 photographs of various damages being attributed to the Tenant. The Landlord led no direct evidence as to the cause of the damages being claimed. No contractors testified and no reports were tendered. The Landlord testified that the unit was not repaired despite being re-rented in December, 2023. In my view, this calls into question the extent of the damage being claimed by the Landlord given that the unit was re-rented without repairs within two months of the tenant vacating.
18. The Tenant denied having caused this damage. They testified that they were not aware of any water damage or floor damage and denied responsibility, testifying that during the tenancy he heard an "explosion" and smelled feces. The Tenant called the concierge and was told that there was leaking on that floor of the building. The Tenant didn't see water in the unit and did not report this to the Landlord because the unit was unaffected and the concierge was aware.

19. The Tenant attributed the Landlord's pictures of floor and water damage to this previous incident. The Landlord did not contradict the Tenant's assertion and was apparently unaware of the issue in the building.
20. The Tenant further testified that they cleaned the unit professionally and patched walls. They submitted that any other damages claimed were as a result of "normal wear and tear". The Tenant referenced photographs of the condition of the unit when he vacated but those were not produced in evidence.
21. It is the Landlord's obligation to prove the allegations on a balance of probabilities. In these circumstances, while the damage took place in the unit, I am not prepared to draw an inference that it was caused wilfully or negligently, or by the Tenant or their occupant or guest. I find the Landlord's evidence lacking in this regard. As a result, I am not satisfied on a balance of probabilities that the water, floor, and cabinetry damage was wilfully or negligently caused by the Tenant or their occupant or guest.

Daily compensation and rent deposit

22. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
23. The Landlord collected a rent deposit from the Tenant and this deposit has been applied to the last month of the tenancy in accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act').

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of October 6, 2023, the date the Tenant vacated.
2. The Tenant shall pay to the Landlord \$2,634.63, which represents the reasonable out of pocket costs that the Landlord will incur to repair the Tenant's damage.
3. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
4. The total amount the Tenant owes the Landlord is \$2,820.63.
5. If the Tenant does not pay the Landlord the full amount owing on or before March 24, 2024, the Tenant will start to owe interest. This will be simple interest calculated from March 25, 2024 at 7.00% annually on the balance outstanding.

March 13, 2024
Date Issued



Kyle McGraw
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.