



**Order under Section 69 /88.1/88.2/89
Residential Tenancies Act, 2006**

Citation: Noronha v Russell, 2024 ONLTB 26984

Date: 2024-04-18

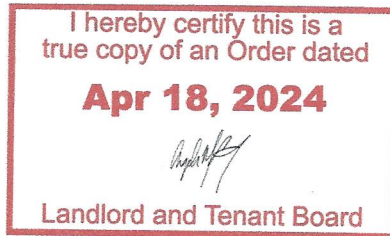
File Number: LTB-L-040207-23

In the matter of: Unit 1, 75 JAMES ST W
Brockville ON K6V3Z9

Between: Sharon Noronha
Riquaat Noronha

And

Nikki Russell



Landlord

Tenant

Sharon Noronha and Riquaat Noronha (the 'Landlord') applied for an order to terminate the tenancy and evict Nikki Russell (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.

The Landlord also applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket costs that are the result of the Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

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. 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.

The Landlord also applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket costs that are the result of the Tenant's conduct or that of another occupant of the rental unit or someone the Tenant permitted in the residential complex. This conduct substantially interfered with the Landlord's reasonable enjoyment of the residential complex or another lawful right, privilege or interest.

This application was heard by videoconference on March 27, 2024.

Only the Landlord Sharon Noronha and the Landlord's Legal Representative Victoria Zarif attended the hearing.

As of 11:08am, 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.

When the capitalized word "Landlord" is used in this order, it refers to all persons or companies identified as a Landlord at the top of the order.

Preliminary Issue:

On March 20, 2024, the Landlord's representative filed an Amended L2 Application with the Board. The Amended Application stated that the Tenant vacated the rental unit on November 1, 2023. The Landlord sought the following amendments:

1. Updated utility costs from the time of filing the application until the Tenant vacated the rental unit.
2. A new claim for wilful or negligent damage regarding a broken window and removal of garbage as a result of a bylaw order.
3. New out-of-pocket expenses related to substantial interference regarding removal of garbage left by the Tenant when she vacated the unit and a lock change because she did not return the keys.

I asked the Landlord's representative if she had served the Amended Application on the Tenant as no Certificate of Service had been filed. Ms. Zarif uploaded a Certificate of Service indicating that she had served the Amended Application on the Tenant by e-mail on March 20, 2024. I asked Ms. Zarif if she had evidence that the Tenant had consented in writing to receiving service by e-mail, such as through a lease agreement. The Landlord did not produce any evidence in which the Tenant agreed to service by e-mail nor any proof that the Amended Application came to the attention of the Tenant pursuant to s. 191(2) of the *Residential Tenancies Act, 2006* (the 'Act').

As a result, I only allowed the amendments to the application relating to the updated utility costs. The Tenant was on notice that the Landlord was seeking utility costs from the original application and it would not be unfair to allow a claim for new utility costs after the application was filed. However, as the Tenant vacated the rental unit and the Landlord did not serve the Amended Application on the Tenant using a method approved by the Act or the LTB Rules of Procedure, allowing new damage or out-of-pocket expenses would unduly prejudice the Tenant as she did not have proper notice of these new claims.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the claim for out-of-pocket expenses related to unpaid utilities in the application. Therefore, the Tenant must pay the Landlord \$5,268.53.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N5 Notice of Termination

3. As the Tenant vacated the rental unit on November 1, 2023, the application for eviction based on the N5 Notice is moot.

Compensation for unpaid utilities

4. The Tenant failed to pay electricity and water costs that they were required to pay under the terms of the tenancy agreement.
5. The Landlord has incurred reasonable out-of-pocket expenses of \$5,268.53 as a result of the Tenant's failure to pay electricity and water costs.
6. The Landlord submitted Brockville Water bills for the Tenant's rental unit from December 20, 2021 to October 20, 2023 in the amount of \$2,452.59. She testified that she sent each invoice to the Tenant for payment but she never received payment and paid the bills herself. The Landlord submitted copies of emails with the invoices attached, along with replies from the Tenant.
7. The Landlord submitted Hydro One bills for the Tenant's rental unit from May 2, 2022 to October 13, 2023 in the amount of \$2,815.94. She testified that she sent each invoice to the Tenant for payment but she never received payment and paid the bills herself. The Landlord submitted copies of emails with the invoices attached, along with replies from the Tenant.

Compensation for damages

8. As explained above, I did not allow the application to be amended to include the claim for compensation for damages.

Compensation for substantial interference

9. The Landlord has not proven that the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex substantially interfered with the reasonable enjoyment of the residential complex by the Landlord or another lawful right, privilege or interest of the Landlord.
10. In the original application, the Landlord sought out-of-pocket expenses for:
 - a. Preventing an electrician from entering unit to conduct repairs;
 - b. Preventing duct cleaning company from entering to conduct maintenance; and
 - c. Interfering with and preventing upstairs tenants from parking in designated parking spot so a street parking permit was purchased.
11. The Landlord did not lead any evidence on the issue related to parking. Therefore, my reasons will be limited to preventing the electrician from entering the unit and preventing the duct cleaning company from entering the unit.
12. The Landlord alleged that the Tenant did not allow an electrician access to the rental unit on September 7, 2022 to perform an inspection ordered by the Fire Marshall. She tendered an email dated September 8, 2022 that she sent the Tenant, and a response from the Tenant on September 9, 2022, as well as an invoice for \$150.00 from the electrician dated October 12, 2022 for a minimum service charge.

13. Subsection 27(1) of the Act allows a Landlord to enter a rental unit with at least 24 hours written notice to the Tenant. The Landlord did not submit any evidence that 24 hours written notice was given to the Tenant. As such, I find the Landlord has not demonstrated that the Tenant interfered with her lawful right to enter the rental unit to conduct the electrical inspection. Therefore, this claim is dismissed.
14. The Landlord alleged that the Tenant did not allow a duct cleaning company access to the rental unit on November 9, 2022. She tendered an email dated November 7, 2022 where she notified the Tenant the duct cleaning company would be attending the rental unit to conduct work between 10:00am and 2:00pm. The Landlord sent an email on November 9, 2022 stating that the duct cleaning company attended at 1:30pm on November 9, 2022 but that the Tenant did not open the door to allow the work. The Tenant responded on November 10, 2022 that she was not home when the duct cleaning company attended.
15. While the Landlord sent an email to the Tenant notifying her that the duct cleaning company would be attending the rental unit on November 9, 2022, it does not satisfy the notice requirements of s. 27. Notice must be given in accordance with s. 191 of the Act.
16. Email notice is acceptable if the Tenant has consented to receiving notice by email. I have no evidence before me that the Tenant consented to receiving notice by email.
17. In addition, the Landlord did not demonstrate that the email notice of November 7, 2022 came to the attention of the Tenant 24 hours before the duct cleaning company attended the rental unit. The Tenant did respond to the email, however, it was the day after the company attended.
18. As such, I find the Landlord has not demonstrated the Tenant interfered with her lawful right to enter the rental unit to clean the ducts. Therefore, this claim is dismissed.
19. In the Amended Application the Landlord sought out-of-pocket costs for removing garbage and changing the locks after the Tenant moved out. As I have outlined in the preliminary issue above, I did not allow these claims as the Tenant did not have proper notice of them.
20. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

It is ordered that:

1. The Tenant shall pay the Landlord \$5,268.53, which represents the reasonable out-of-pocket expenses the Landlord has incurred as a result of unpaid utility costs.
2. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
3. The total amount the Tenant owes the Landlord is \$5,454.53.

4. If the Tenant does not pay the Landlord the full amount owing on or before April 29, 2024, the Tenant will start to owe interest. This will be simple interest calculated from April 30, 2024 at 7.00% annually on the balance outstanding.

April 18, 2024
Date Issued



Angela Long
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.