



OCT 20 2023

Landlord and Tenant Board

**Order under Section 87 88.1 88.2 89
Residential Tenancies Act, 2006**

Citation: Khan v Smith and Gallant, 2023 ONLTB 68588

Date: 2023-10-20

File Number: LTB-L-005300-23

In the matter of: 4, 8974 Willoughby Drive
Niagara Falls ON L2G7Y4

Between: Bilal Khan Landlord

And

Gabriella Smith and Former Tenant
Kyle Gallant

Bilal Khan (the 'Landlord') applied for an order requiring Gabriella Smith and Kyle Gallant (the 'Former Tenant') to pay the rent and daily compensation that the Former Tenant owes.

Bilal Khan (the 'Landlord') applied for an order requiring Gabriella Smith and Kyle Gallant (the 'Former Tenant') to pay the Landlord's reasonable out-of-pocket costs that are the result of the Former Tenant's conduct or that of another occupant of the rental unit or someone the Former 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.

Bilal Khan (the 'Landlord') applied for an order requiring Gabriella Smith and Kyle Gallant (the 'Former Tenant') to pay the Landlord's reasonable out-of-pocket costs that are the result of the Former Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

Bilal Khan (the 'Landlord') applied for an order requiring Gabriella Smith and Kyle Gallant (the 'Former Tenant') to pay the Landlord's reasonable out-of-pocket costs that the Landlord incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Former Tenant, another occupant of the rental unit or someone the Former Tenant permitted in the residential complex.

This application was heard by videoconference on September 14, 2023.

Only the Landlord, attended the hearing.

Determinations:

1. I am satisfied that the Landlord served the Former Tenant with the application and Notice of Hearing at least 30 days before the hearing in accordance with Rule 3.3 of the LTB's Rules of Procedure.
2. I am satisfied that the Landlord served the Former Tenant with the application and Notice of Hearing using a method permitted in subsection 191(1.0.1) of the *Residential Tenancies Act, 2006* (the 'Act') and Rule 3.3 of the LTB's Rules of Procedure.
3. These documents were served on July 19, 2023 by email. The Landlord submitted the tenancy agreement that indicated the Former Tenant authorized the Landlord to send documents by email to the Former Tenant's address provided in the tenancy agreement.
4. The Former Tenant vacated the rental unit on June 15, 2022.
5. The application was filed within one year after the Former Tenant ceased to be in possession of the rental unit.

Landlord's Claim: Arrears

8. Based on the rent, the daily rent/compensation is \$93.70. This amount is calculated as follows: \$2,850.00 x , divided by 365 days.
9. The Former Tenant has not made any payments since the application was filed.
10. The rent arrears and daily compensation owing to June 15, 2022 are \$17,100.00.
11. With the Landlord's uncontested testimony and evidence before me and given the absence of the Former Tenant to testify to the Landlord's claims for arrears, I find on a balance of probabilities that the Landlord has met the burden of proof to support his claim for arrears in the application. The Landlord's portion for arrears in the application is granted.
12. The Former Tenant owes the Landlord \$17,100.00.
13. Landlord collected a rent deposit of \$2,850.00 from the Former Tenant and this deposit is still being held by the Landlord. The rent deposit is applied to the last rental period of the tenancy.
14. Interest on the rent deposit, in the amount of \$15.56 is owing to the Former Tenant for the period from to June 15, 2022.
15. The total arrears the Former Tenant owes to the Landlord is \$14,234.44.

Landlord's Claim: Substantial Interference

14. The Former Tenant, another occupant of the rental unit or someone the Former 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.
15. The Landlord incurred reasonable out-of-pocket expenses of \$867.00. These expenses were incurred as a result of the substantial interference caused by the Former Tenant.
16. The Landlord's position is that the Former Tenant was hosting loud parties and was warned by the condominium management to stop. The Former Tenant did not stop the activity and the condo management's lawyer drafted a formal letter to ward the Former Tenant to cease the activity.
17. The lawyer fees were charged to the Landlord as the owner of the rental unit and the Landlord is claiming the reimbursement of the condo's lawyer fees as substantial interference.
18. The Landlord submitted into evidence a copy of the invoice he received from the condominiums lawyer.
19. With the evidence before me and on a balance of probabilities I'm satisfied the landlord has met the burden of proof to support his claim and therefore I find this portion of the Landlord's application is granted.
20. The Former Tenant owes the Landlord \$867.00.

Landlord's Claim: Unpaid Utilities

19. The Former Tenant failed to pay utility costs that they were required to pay under the terms of the tenancy agreement.
20. The Landlord incurred reasonable out-of-pocket expenses of \$2,307.78 as a result of the Former Tenant's failure to pay heat, electricity and/or water costs.
21. The Landlord submitted into evidence copies of the unpaid utility bills the tenant was required to pay in accordance with the tenancy agreement.
22. with the evidence before me and on a balance of probabilities and in the absence of the Former Tenant to provide testimony or evidence to dispute the Landlord's claims, I find the landlord has met the burden of proof to support his claim in the application the tenant owes for unpaid utilities and therefore this portion of the Landlord's application is granted.

Landlord's Claim: Damage

23. The Former Tenant, another occupant of the rental unit or a person whom the Former Tenant permitted in the residential complex willfully or negligently caused undue damage to the rental unit or residential complex.
24. The position of the Landlord is that the Former Tenant willfully or negligently caused damage to the rental unit. The Landlord claims the Former Tenant broke the dishwasher and washing machine, damaged the carpet due to stains, caused damage to the dry wall and three inside doors and the Landlord had to remove garbage from the rental unit.
25. The Landlord claims costs of \$1,500.00 for the above damage.
26. The Landlord did not submit any evidence to support his claim the Former Tenant willfully or negligently caused damaged to the items in his application, and is relying solely on his oral testimony to support his claim for the reimbursement of damage in the amount of \$1,500.00.
27. In the absence of any documentary evidence in the form of photos or receipts for the costs for damage the Landlord incurred I am not persuaded by the landlords evidence, and therefore on a balance of probabilities I find the landlord has not met the burden to support his claim for the reimbursement of the \$1500.00 claimed in the application. Therefore this portion of the Landlord 's application is dismissed.
27. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
28. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
29. This order contains all reasons for the determinations and order made. No further reasons will be issued.

It is ordered that:

1. The Former Tenant shall pay to the Landlord \$14,234.44, which represents rent and compensation owing up to June 15, 2022 minus the last month's rent deposit minus the interest.
2. The Former Tenant shall pay to the Landlord \$867.00, which represents the reasonable out-of-pocket expenses the Landlord incurred as a result of the substantial interference.
3. The Former Tenant shall pay to the Landlord \$2,307.78, which represents the reasonable out-of-pocket expenses the Landlord incurred as a result of the unpaid utility costs.
4. The Landlord's claim for damage in the amount of \$1,500.00 is dismissed.

5. The Former Tenant shall pay to the Landlord \$201.00 for the cost of filing the application.
6. The total amount the Former Tenant owes the Landlord is \$17,610.22.
7. If the Former Tenant does not pay the Landlord the full amount owing on or before October 31, 2023, the Former Tenant will start to owe interest. This will be simple interest calculated from November 1, 2023 at 7.00% annually on the balance outstanding.



Greg Brocanier
Member, Landlord and Tenant Board

October 20, 2023
Date Issued

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.