



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

Citation: Hossain v Gonzalez, 2024 ONLTB 16032

Date: 2024-03-06

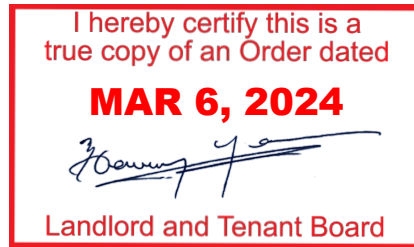
File Number: LTB-L-023616-23

In the matter of: Basement, 7289 TERRAGAR BLVD
MISSISSAUGA ON L5N7L8

Between: Ashfaq UI Hossain

And

Zashel Gil Gonzalez



Landlord

Tenant

Ashfaq UI Hossain (the 'Landlord') applied for an order to terminate the tenancy and evict Zashel gil Gonzalez (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully caused undue damage to the premises;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the building has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord in a building that has three or fewer residential units and the Landlord resides in the building.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

Ashfaq UI Hossain (the 'Landlord') also applied for an order requiring Zashel Gil Gonzalez (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 January 3, 2024.

Only the Landlord attended the hearing.

As of 10:00AM, 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.

Determinations:

1. The Tenant vacated the rental unit on June 3, 2023. On that day, the Landlord received a text message from the Tenant saying she was no longer in the unit.
2. Therefore, the N7 is moot and this hearing is in regard to damages claimed on the L2 application. The Tenant was in possession of the rental unit on the date the application was filed.

Section 89 damage claim

3. At the hearing, the Landlord submitted that the Tenant, and her guest, had damaged the rental unit during the tenancy. In support of this claim, the Landlord submitted photographic evidence to show this. To wit:
 - A photo of damage to the wall. The Landlord testified that there was no damage prior to the tenancy.
 - A photo of damage to the bedroom door. The Landlord testified that the damage was not there before. The Landlord testified that the Tenant's boyfriend would sometimes kick the door when he was visiting her.
 - A photo of the door to the entrance of the apartment. The photo showed that the door was damaged. The Landlord testified that that damage was not present prior to the tenancy.
4. In reviewing the Landlord's claim for compensation, I note the following in the *Residential Tenancies Act, 2006*, (the 'Act'), per subsection 89(1) 'A landlord may apply to the Board for an order requiring a tenant or former 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,

(a) while the tenant or former tenant is or was in possession of the rental unit, the tenant or former tenant, another occupant of the rental unit **or a person permitted in the residential complex by the tenant or former tenant wilfully or negligently causes or caused undue damage to the rental unit or the residential complex;**'[Emphasis mine]
5. The Landlord testified that the Tenant's boyfriend would sometimes kick the door. This is clearly a willful act that would cause undue damage. On the balance of probabilities, I find that the Tenant or her guest willfully or negligently caused undue damage to the rental unit.
6. The Landlord claimed \$1,279.74 as reasonable out of pocket expenses. In support of this, the Landlord provided a copy of a bill from Paint City for repairs for the damage in the rental unit.
7. This bill outlined the purchases of two doors. And labour to install and paint the two doors. Based on this evidence, I find that this is a repair in accordance with subsection 89(1) of the Act.

8. I find that the Landlord has incurred reasonable costs of \$1279.74 to repair the damage.

Daily compensation, NSF charges, rent deposit

9. The Tenant was required to pay the Landlord \$3,774.25 in daily compensation for use and occupation of the rental unit for the period from March 14, 2023 to June 3, 2023.
10. Based on the Monthly rent, the daily compensation is \$46.03. This amount is calculated as follows: \$1,400.00 x 12, divided by 365 days.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. The Landlord collected a rent deposit of \$1,400.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$26.85 is owing to the Tenant for the period from August 28, 2022 to June 3, 2023.
13. In accordance with subsection 106(10) of the Act, the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of June 3, 2023.
2. The Tenant shall pay to the Landlord \$2,374.25, which represents compensation for the use of the unit from March 14, 2023 to June 3, 2023, less payments made by the Tenant to the Landlord for this period.
3. The Tenant shall pay to the Landlord \$1279.74, which represents the reasonable costs of repairing the damage.
4. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
5. The Landlord owes \$1,426.85 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Tenant.
6. The total amount the Tenant owes the Landlord is \$2,413.14.
7. If the Tenant does not pay the Landlord the full amount owing on or before March 17, 2024, the Tenant will start to owe interest. This will be simple interest calculated from March 18, 2024 at 7.00% annually on the balance outstanding.

March 6, 2024
Date Issued


Henry Yeung
Member, Landlord and Tenant Board

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