



Order under Section 69
Residential Tenancies Act, 2006

File Number: TEL-04314-19

In the matter of: 461 DOWNIE STREET
PETERBOROUGH ON K9H4J6

Between: Ken Brown

I hereby certify this is a true copy of the Order
(Name of Document)
(Althea Brevett)

(Signature of Staff Member)

Landlord

and

Nicole Cross
Sheldon Berry

JUN 17 2020

LANDLORD AND TENANT BOARD

Tenants

Ken Brown (KB) (the 'Landlord') applied for an order to terminate the tenancy and evict Sheldon Berry (SB) and Nicole Cross (NC) (the 'Tenants') 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 the Landlord for the damage.

This application was heard in Peterborough on October 10, 2019.

The Landlord, the Landlord's representative, Robert Babcock, and the first-named Tenant attended the hearing. Jim Gleason of J.W.G Homes Services ('Contractor'), also attended the hearing as the Landlord's witness.

Determinations:

ADJOURNMENT REQUEST

1. At the start of the hearing the first-named Tenant requested an adjournment to acquire evidence in relation to claims by the Landlord which arose after the application was filed. As I explained at the hearing, I do not have the jurisdiction to consider these issues they are not a part of the application. For that reason, the request to adjourn is denied as it is unnecessary.

APPLICATION FOR TERMINATION OF TENANCY

2. The Landlord served the Tenants with a notice of termination under section 62 of the *Residential Tenancies Act, 2006* (the 'Act') for wilful or negligent damage done to the rental unit and/or residential complex.

3. After the hearing, the Landlord wrote to the Board advising that eviction has been enforced against the Tenants pursuant to Board order TEL-04859-19, issued on January 20, 2020. This means eviction is no longer a live remedial issue in this application.
4. As a result, this order strictly deals with the Landlord's claim for damaged under section 89 of the Act as determined below.

SECTION 89 DAMAGE CLAIM

1. The Landlord claims the Tenants wilfully or negligently damaged the rental unit and/or residential complex that would require \$6,283.32 to fix damage. The Landlord relies on an undated Estimate ("Estimate") from the Contractor, which lists the individual items requiring repair. The Contractor testifies that he is a handy man who the Landlord has historically retained to maintain parts of the residential complex and he wrote the Estimate.
2. The Estimate includes the following items:
 - Missing thermostat;
 - Broken front door;
 - Holes in walls and damaged trim;
 - Stain on the deck;
 - Torn window screen;
 - Broken door handles;
 - Cleaning of property; and
 - Cost of Estimate.
3. As I explained at the hearing, subsection 89(1) of the Act states,

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.]

4. I explained this because I find cleaning the property and the Estimate cost are not damage as described by the Act. Clean is not a repair or replacement and neither is the cost of having an individual survey the unit and give an estimate. For this reason, these two claims are denied.

Missing thermostat

5. The Landlord and Contractor testify that the inspection revealed that the wall-mounted thermostat was missing.

6. The Estimate identifies the replacement cost of the thermostat as **\$79.50**.
7. The first-named Tenant admits she removed the thermostat from the wall and, to date, has not re-installed it. She still has the thermostat and believes that it is still operational; however, she has failed to provide any evidence that this is the case other than her testimony.
8. It is clear from the Tenant's testimony that this is not normal wear and tear of the thermostat. She has deliberately taken the thermostat off of the wall. As a result, I find that the Landlord is entitled to have this item fixed.
9. If what the Tenant says is true, then she will be ordered to reinstall the thermostat and ensure it is in working order. If it is not working after reinstallation then the Tenants will be required to pay for this item. This would also be the case if the Tenants are no longer in possession of the thermostat.

Broken front door

10. The Landlord and Contractor's testimony regarding the front door jamb being kicked in is corroborated by the first-named Tenant. She admits that members of her household caused this damage in the course of forcibly opening the closed door when carrying groceries.
11. The Landlord believes the replacement cost of the front door as **\$2,548.15** based on the invoice the Landlord submits to the Board dated September 30, 2019 from Fersina Windows. Since the metal lock and latch assembly are integral to the jamb and because the jamb and casing constitute a single unit, the entire door had to be replaced.
12. The Tenant argues that licensed contractors she has spoken to told her they can replace the door for less. The problem with this is that the Tenant fails to provide the Board any documentary evidence such as estimates for the work. Simply saying she can have the door fixed for less is not enough.
13. Again, I do not believe such damage to constitute normal wear and tear in the rental unit. The Landlord is entitled to full reimbursement of this item.

Holes in living room wall and damage to the door trim

14. The Contractor says he found that the Tenants had hung a dart board on one of the walls of the living room and that the Tenants playing darts against this board produced more than 30 dart tip-sized holes in the wall. This damage, as well as the above physical damage to the trim of the front door required priming and painting.
15. The Estimate identifies the cost of the paint and primer required to repair this damage as **\$156.90**.
16. According to the first-named Tenant this damage should be considered normal wear and tear to the unit. I do not agree. I say this because this is not damage that would happen

in the normal environment of living in a rental unit. What is more likely is that the Tenants negligent when setting up the dart board in such a way as to have something protecting the wall in close proximity to the board to prevent the excessive holes in the wall.

17. I find this is undue damage and the Tenants must reimburse the Landlord for the repair.

Stains on the deck

18. The Landlord states that the inspection revealed the presence of stains on the Tenants' portion of the wooden deck resulting from the spillage and overflow of the Tenants' garbage placed in or near the garbage and recycling bins on the deck.
19. The Estimate identifies the cost to Landlord for power washing the stains off of the deck as **\$203.40**.
20. The first-named Tenant believes that the stains do not constitute undue damage as they a result of normal wear and tear.
21. The photographs of the deck submitted by the Landlord, which the Tenant does not challenge, show an extensive number of stains of various sizes near the Tenants' garbage and recycling containers. In the very least, the Tenants were negligent in not taking reasonable steps to prevent large amounts of their garbage from winding up on the deck. The stains, covering most of the surface of the porch that was shown in the photographs, are far more numerous than what might reasonably be expected in the normal use of a deck or in the normal process of waste management.
22. For the above reasons, I find the Tenants must reimburse the Landlord for the repair of the deck.

Torn window screen

23. The Landlord says there are two tears in the window screen in the north east bedroom and provided the Board with a photograph of the torn screen.
24. The Estimate identifies the cost the Landlord to replace the screen as **\$62.15**.
25. The first-named Tenant does not dispute the Landlord's claim or photograph. This damage is clearly not normal wear and tear and the Tenants are responsible for the cost to repair the damage.

Broken door handles

26. The Estimate lists a cost of **\$99.44** for the broken handles and latches on the doors of the two front bedrooms.
27. According to the first-named Tenant these mechanisms broke through normal use by her and her family. She notified the Landlord by e-mail of this maintenance deficiency when they broke. She also says that this email is on her phone.

28. When I asked the Tenant to provide the Board and Landlord with copies of this email she says that she was unaware she was required to bring copies of her evidence. I am not satisfied by the Tenant's claim as the notice of hearing clearly states that copies are required.
29. In order to give the Tenant a chance to show the Board the evidence at the hearing and then submit a hard copy on a specific date I asked her to show me the email on her phone. The first-named Tenant says that phone the email is on is smashed and unusable. Given the email is online and the Tenant would have access to the email from any device with internet, I again ask the Tenant whether she can show me the email on another device. Her response is that she has forgotten her password.
30. I find the Tenant's responses to be deliberately evasive and not credible. I am satisfied by the evidence provided by the Landlord and find the Tenants are responsible for the undue damage done to the broken handles and latches.

Remedies

31. In total, the Landlord has or will incur costs of \$3,149.54 to repair the damage and/or replace property that was damaged and cannot reasonably be repaired.
32. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The Tenants shall pay to the Landlord \$3,149.54, which represents the reasonable costs of repairing the damage and replacing the damaged property that cannot reasonably be repaired.
2. The Tenants shall also pay to the Landlord \$175.00 for the cost of filing the application.
3. If the Tenants do not pay the Landlord the full amount owing on or before June 28, 2020, they will start to owe interest. This will be simple interest calculated from June 29, 2020 at 3.00% annually on the balance outstanding.

June 17, 2020
Date Issued


Shelby Whittick
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.