



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

Citation: Syed Shahin v Al-Timimi, 2024 ONLTB 13440

Date: 2024-02-23

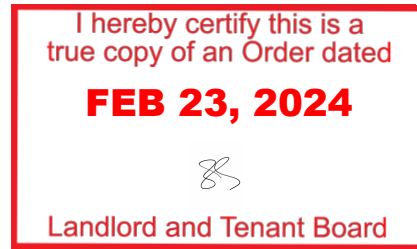
File Number: LTB-L-029050-23

In the matter of: Bsmnt, 805 Helen Cres
Pickering On L1W 1V1

Between: Shahriar Syed Shahin

And

Abdulrahman Al-Timimi
Choniece Hope Cyrus



Landlord

Tenants

Shahriar Syed Shahin (the 'Landlord') applied for an order to terminate the tenancy and evict Abdulrahman Al-Timimi and Choniece Hope Cyrus (the 'Tenants') because:

- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant;
- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully or negligently caused damage to the premises.

Shahriar Syed Shahin (the 'Landlord') also applied for an order requiring Abdulrahman Al-Timimi and Choniece Hope Cyrus (the 'Tenants') 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.

Shahriar Syed Shahin (the 'Landlord') also applied for an order requiring Abdulrahman Al-Timimi and Choniece Hope Cyrus (the 'Tenants') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenants' 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 February 12, 2024.

The Landlord and the Tenant Abdulrahman Al-Timimi attended the hearing. The Tenant Choniece Hope-Cyrus was present earlier in the hearing block but had left the hearing prior to the file being heard.

Determinations:

Preliminary Issues

Adjournment Request

1. The Tenant requested an adjournment on the basis he had not had an opportunity to submit his evidence to the Board and give it to the Landlord. The Board's records show the Notice of Hearing was sent to the Tenant on September 5, 2023. The Tenant did not dispute receiving the notice but stated the Landlord's former Legal Representative advised him the hearing was not going ahead. I asked the Tenant when this conversation occurred and he provided no date but only estimated it was a few months before the hearing.
2. I continued to question the Tenant about this conversation with the Landlord's former Legal Representative and the Tenant then stated it was the Landlord that had told him the hearing was not going ahead. Further still, the Tenant stated he did some repairs to the unit and did not think the hearing was required any longer.
3. The Landlord opposed the adjournment request citing an interest in having the application heard. The Landlord insisted no one told the Tenant the hearing was no longer required.
4. Based on the submissions of the parties, I was not convinced there was any reasonable basis to adjourn the file and the Tenant's request was denied. I held the file down so the Tenant could provide the Landlord his evidence. The file was recalled and heard at 3:54 p.m.

N5 Not Filed with the Application

5. Pursuant to section 69 of the *Residential Tenancies Act, 2006* (the Act), a Landlord has 30 days from the termination date in a notice of termination to file an application with the Board seeking an eviction order.
6. Section 53 of *Ontario Regulation 516/06* sets out what must accompany an application for eviction under section 69 of the Act. One of the things that must accompany an application for eviction is a copy of the notice of termination the application is based upon.
7. The Landlord did not file a copy of the N5 notice of termination until February 2, 2024 which is 10 months after the March 31, 2023 termination date. By this time, the 30 days stipulated in section 69 of the Act had elapsed and the Landlord was out of time to perfect the application.
8. I explained to the Landlord that in the circumstances the Board did not have the jurisdiction to grant an application for eviction. The Landlord advised the Board they wished to proceed for an order for the damages claimed on the application. The Landlord withdrew their claim for out-of-pocket expenses related to substantial interference.

L2 Claim for Damages

9. Based on the submissions of the Landlord, the application proceeded considering only the claim for damages in the amount of \$4,325.00. During the hearing the Landlord requested a higher amount in keeping with estimates they had obtained. No request to amend the application was made in advance of the hearing and no reason was provided for this. As such, I denied the amendment since I found it would be procedurally fair to allow the

Landlord to significantly increase their monetary claim in the middle of the hearing without any notice whatsoever to the Tenant.

10. The Landlord's application claims the Tenant has willfully or negligently caused undue damage. The application seeks the reasonable out of pocket costs the Landlord has incurred or will incur to replace or repair the damage. The damage claimed relates to the driveway, oil stains, broken main door and locks, holes in drywall, scratches on a wall and unmatching paint.

Driveway

11. The Landlord testified the Tenant has damaged the driveway at the rental unit by storing equipment and tools in the driveway. This includes a trailer, a snow plow and a Bobcat excavator. The Landlord submitted photographs showing these items in the driveway. The Landlord submitted photographs taken on January 28, 2024 showing a significant number of scratches and gouges in the asphalt driveway.
12. The Tenant testified that the equipment and tools are not his and that two other tenants live at the property. He also stated the equipment is rarely at the property. When it was pointed out that the equipment appears in several photos, he then stated he had been sick for awhile and unable to move the equipment off the driveway. When asked directly, the Tenant acknowledged his boss technically owns the equipment but that he had been responsible for it at the residential complex.
13. The Tenant also testified that the large snow plow never touches the driveway and then later testified it does drag across the driveway when he has to plow it. The Tenant testified that while the Bobcat excavator has large metal prongs sticking out from the front of it they did not cause damage to the driveway.
14. The Tenant testified that the asphalt repairs itself when it warms up and likened it to a liquid. The Tenant submitted a photograph of the driveway into evidence. The photo is taken from the street and shows the Tenant's boss' snow plow being stored on the driveway. The photo also clearly shows gouges and scratches in the driveway in the area closest to the person taking the photo.
15. Lastly, the Tenant testified driveways are made for cars and they are like roads. As such they deteriorate.
16. Based on the evidence, I am convinced on a balance of probabilities the Tenant has caused undue damage to the driveway. I find it most likely this damage was caused by the snow plow being dragged and stored in the driveway and the metal prongs from the excavator. No evidence was presented that any other tenant has, stores or uses heavy equipment or tools in the driveway.
17. I also found the varying evidence from the Tenant concerning. In my view, the Tenant's statement that the equipment was not his was an attempt to mislead the Board. He knew he had care and control over the equipment. He also had to know that if the statement "the snow plow is not mine" was left untouched, it would point to him being blameless.
18. The Tenant also stated the equipment was rarely or never in the driveway yet virtually every photo submitted, including his own, show his equipment in the driveway. His later

statement that he had been ill to explain the inconsistency in his evidence seemed convenient. For these reasons, and the inexplicable assertion that asphalt heals itself, I did not find the Tenant's evidence reliable.

Broken Main Door and Hinges

19. The Landlord testified a cleaner had accidentally locked the front door upon their departure. The Tenant called the Landlord to let him into the property and the Landlord stated they would attend the complex to let him in. The Landlord's evidence was the Tenant did not wait for them to arrive and instead broke the door open damaging the door, the lock and the hinges. The Landlord submitted photos of the door into evidence. The door is virtually destroyed based on the number of visible dents. The surrounding material the door was attached to is also damaged.
20. The Tenant admitted the incident occurred and he was locked out. He testified that as he tried to enter a couple of times the door simply fell off its hinges. The Tenant's evidence was the door had not been properly installed and this is why it could not withstand a slight amount of pressure.
21. Based on the evidence presented I find it most likely the Tenant caused undue damage to the main door by forcing his way into the property instead of waiting for the Landlord to arrive and unlock the door. I do not accept the Tenant's evidence that the door simply fell off the hinges due to an improper installation. This explanation fails to consider the significant visible damage to the door and the door frame. As stated earlier, I did not find the Tenant's evidence reliable and his version of events did not fit the physical evidence. In my view, his evidence ranged from evasive to completely implausible.

Amount of Damage

22. The Landlord submitted they asked contractors if the driveway could be repaired and were advised more than once to rip up the old gouged and scratched asphalt and repave the area. I was satisfied based on the evidence from the Landlord and the current state of the driveway that the driveway most likely needs to be fully repaved.
23. The Landlord submitted more than one estimate for the damage being claimed in the application. The most recent estimates are for \$8,536.44 and \$12,965.24. Both estimates quote only a new driveway and the repair to the door and surrounding trim.
24. Based on these quotations, I am convinced the amount of \$4,325.00 claimed by the Landlord on the application is fair and reasonable to replace the driveway and repair the door. It is almost half of the lowest quote the Landlord received. As such this amount will be ordered.
25. Since I have already found the Landlord has proven the amount claimed for damage in the application and cannot be awarded more, it is unnecessary for me to consider the remaining damage allegations.

It is ordered that:

1. The Landlord's application for eviction is denied.
2. The Tenant shall pay to the Landlord \$4,325.00, which represents the reasonable costs of repairing the damage and replacing the damaged property.
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 \$4,511.00.
5. If the Tenant does not pay the Landlord the full amount owing on or before March 5, 2024, the Tenant will start to owe interest. This will be simple interest calculated from March 6, 2024 at 7.00% annually on the balance outstanding.



John Cashmore
Member, Landlord and Tenant Board

February 23, 2024
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.