



Order under Section 69
Residential Tenancies Act, 2006

File Number: TEL-18050-21

In the matter of: 1712, 125 VILLAGE GREEN SQUARE
SCARBOROUGH ON M1S0G3

Between: Bhavin Paleja Landlords
Medha Paleja

and

Michael Zhestkov Tenant

Bhavin Paleja and Medha Paleja (the 'Landlords') applied for an order to terminate the tenancy and evict Michael Zhestkov (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 undue damage to the premises. The Landlords has also applied for an order requiring the Tenant to compensate the Landlords for the damage. The Landlords also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on October 5, 2021. The Landlords' legal representative, Sabah Fatima, and the Tenant attended the hearing.

Determinations:

1. This tenancy was already terminated as of the date of the hearing and the Tenant vacated the rental unit on September 3, 2021. The Landlords were no longer seeking termination of this tenancy at the hearing.
2. Most of the facts in this application are not in dispute. The rental unit is located in a condominium building. On May 7, 2021 the Tenant intentionally kicked open the locked door leading to his locker thus causing damage to the door. The condo corporation subsequently repaired the damage at the cost of \$1,644.15, and charged it back to the Landlords. The Landlords paid the invoice and the Tenant did not reimburse him. The only issue that is in dispute is whether the Tenant should be responsible for reimbursing the Landlords for the cost. For the reasons below I find that the Tenant is.

The Landlord's evidence

3. Video evidence submitted by the Landlords shows the Tenant repeatedly kicking the door leading to the lockers at the residential complex. After the Tenant kicked the door near

the door handle area, the door gave in and the Tenant gained access to the lockers. This evidence was not seriously challenged or contradicted by the Tenant.

4. The Landlords presented copies of condo corporation's invoices for \$209.05, \$322.05 and \$1,113.05 for the cost of temporarily repairing the door and the door frame and then for the cost of fully repairing/replacing the door and the locking mechanism. The Landlords submitted proof that they reimbursed the condo corporation for these amounts totalling \$1,644.15 on June 9, 2021.

The Tenant's evidence

5. The Tenant did not seriously challenge the Landlords' evidence but argued that it omitted important context and that the events of May 7, 2021 should be characterized as him simply gaining access to his medicine.
6. The Tenant testified that he is a disabled person and that he has to take vital heart medicine twice a day. He purchases this medicine every three months and stores it in the rental unit. He testified that he kept emergency supply of this medicine in his locker. He testified that he can not go more than one day without this medication.
7. On May 7, 2021 the Tenant received a letter from the condo corporation advising all residents that locker keys will be replaced for security reasons. Residents were instructed to return existing keys and advised that new keys would be available for pickup the next business day. The letter was sent on Friday and it was the Tenant's evidence that this meant that the Tenant would not have access to his locker for almost four days until Monday, May 10.
8. After receiving the notice the Tenant argued with the concierge in an attempt to gain access to his locker. He did not achieve the desired outcome, went down to the locker room, and kicked the door until it broke and he was able to gain access. He testified that he had to do it because he had to gain access to vital medicine.
9. The Tenant also took issue with the condo corporation's invoices. He argued that they overpaid for the repairs and that these repairs could and should have been cheaper.
10. The Tenant did not lead any independent or expert evidence about the cost of repairs, about his medical condition or about his medication.

Analysis and the law

11. The application was originally brought under section 62 of the Residential Tenancies Act, 2006 (the "Act"). However, as the Tenant has since vacated the rental unit, the application effectively proceeded under section 89 of the Act, and the Landlords sought compensation only for the damage done.
12. In order to be successful in an application under subsection 89, a landlord must prove on a balance of probabilities that:

- a. The damage in question is “undue”, i.e. not wear and tear caused by ordinary usage;
 - b. The Tenant, an occupant or a guest either wilfully (deliberately) or negligently (carelessly) caused the damage; and
 - c. If the above two criteria are satisfied, the Landlord must lead evidence of the reasonable cost of repairing or replacing the damage.
13. I find that the Landlords proved all of these components on the balance of probabilities.
 14. The damage is clearly undue. Repeatedly and intentionally kicking a door until the door and the locking mechanism no longer restrict access to an area can only be characterized as undue damage.
 15. The Landlord proved that the reasonable cost of repair was \$1,644.15. The Landlord’s evidence shows that this is the cost incurred by the condo corporation and paid by the Landlord. The Tenant’s argument that the invoice was inflated was unsupported by any independent or documentary evidence. I prefer the Landlord’s documentary evidence on this point over the Tenant’s unsubstantiated non-expert personal opinion that these repairs could have been done differently.
 16. Finally, I find that the damage was wilfully caused by the Tenant. The Tenant intentionally kicked the door until it broke and plain reading of section 89 leads me to conclude that the damage was caused by the Tenant’s wilful actions. The Tenant’s argument seems to be that the damage was caused by the condo corporation’s decision to restrict access to his locker. He argued that he did not break down the door but simply gained access to his vital medication almost inadvertently causing damage to the door in the process. He argued that he should have access to his locker 24/7.
 17. The Tenant did not provide, and I am not aware of, any legal authority that would support the Tenant’s position. I therefore find that the Landlord proved its case under s. 89 of the Act as the Tenant’s own evidence demonstrate undue and wilful nature of the damage. I will nevertheless briefly address the Tenant’s argument below.
 18. Even if an argument similar to the Tenant’s argument could theoretically succeed, I find that it is more likely than not the Tenant wilfully or negligently caused the damage at issue in the circumstances.
 19. If the Tenant needed to gain access to his medication in an urgent manner, I find that he at least negligently caused undue damage to the rental unit. The Tenant failed to investigate any alternatives that may have been available to him after his attempts to argue with the concierge were unsuccessful. On cross-examination he admitted that he didn’t call a locksmith. He did not lead any evidence that he escalated his complaint beyond the concierge or otherwise attempted to bring his medical condition to the attention of the condo corporation. The Tenant’s evidence was that he was able to go without his medication for a day, but he chose to break the door down some 45-60 minutes after he started his argument with the concierge. Even if the chain of events was started by the condo corporation, it seems quite likely that the damage would have been

avoided but for the Tenant's negligent failure to investigate any alternatives to immediately breaking down the door.

20. I also did not find the Tenant's testimony about these events to be reliable for several reasons. The Tenant did not provide any detail about his health or about his medications that would help the Board ascertain the degree of medical emergency he was in or to establish that he could not wait until Monday May 10, 2021. He testified that he was supposed to take his medication twice a day but could go without this medication for a full day. It was his evidence that he could not go without it for 4 days but I am unable to determine the accuracy of this statement or the source of the Tenant's belief. While it is understandable that the Tenant might choose not to disclose his medical information, all of these concerns taken together make it difficult for the Board to rely on the Tenant's version of events. The Tenant also did not testify that he ran out of the medicine stored at the rental unit when he presented his case. He provided this crucial piece of information only when he was asked about it. Finally, he was argumentative throughout the hearing and refused to admit clear and simple facts that later turned out to be undisputed.
21. Based on all of the evidence adduced at the hearing I find that The Tenant has wilfully or negligently caused undue damage to the residential complex.
22. This order contains all of the reasons in this matter and no further reasons will issue.

It is ordered that:

1. The Tenant shall pay to the Landlords \$1,644.15, which represents the reasonable costs of repairing the damage.
2. The Tenant shall also pay to the Landlords \$186.00 for the cost of filing the application.
3. If the Tenant does not pay the Landlords the full amount owing on or before January 23, 2022, the Tenant will start to owe interest. This will be simple interest calculated from January 24, 2022 at 2.00% annually on the balance outstanding.

January 12, 2022
Date Issued

Toronto East-RO
2275 Midland Avenue, Unit 2
Toronto ON M1P3E7



Vladimir Nikitin
Member, Landlord and Tenant Board

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