



Order under Section 69
Residential Tenancies Act, 2006

File Number: SWL-45967-20

In the matter of: 4405 TUMBLEWEED CRESCENT CRESCENT
WINDSOR ON N9G3C1

Between: Afifa Rahman Landlord

and

Dickson Enebuse Tenant

Afifa Rahman (the 'Landlord') applied for an order requiring Dickson Enebuse (the 'Tenant') to pay compensation for the damages caused by the Tenant or a person the Tenant permitted in the residential complex

This application was heard by video conference on June 7, 2021.

The Landlord and the Tenant attended the hearing.

Determinations:

1. The Landlord seeks an order requiring the Tenant to pay compensation for damages caused by the Tenant or a person the Tenant permitted in the residential complex, pursuant to subsection 89 of the *Residential Tenancies Act, 2006* (the 'Act').
2. This was a very short tenancy. The Tenant took possession of the rental unit on or about August 19, 2020. The Tenant vacated the rental unit on September 30, 2020.
3. The Tenant was in possession of the rental unit at time the application was filed.
4. In the application, the Landlord seeks \$3,350.00 compensation for the following damages:

1) Dryer	\$ 250.00
2) Laminate Floor	\$1,600.00
3) Walls	\$1,000.00
4) Ceramic Floor	\$ 500.00
5) Roof	Not provided

5. The Landlord also seeks an order for punitive damages in the amount of \$1,200.00. Additionally the Landlord seeks costs of \$225.00 in respect of serving and filing the application documents. The total compensation the Landlord seeks in the L2 application is \$5,000.00.
6. In the application, the Landlord gives notice that she intends to claim, “any other damages to be assessed after move-out” and she notes under Reason 2 that “estimates subject to change based on inspection with pictures”.

The Evidence of the Landlord

7. The Landlord A.R. testified that she inspected the unit about three days after the Tenant moved into the rental unit. At that time, she said, she observed a water leak relating to the refrigerator. When she went downstairs, she observed three industrial sewing machines in the basement area, and damage to the floor and walls of the basement which she attributes to the Tenant using the machines.
8. Accompanying her application, A.R. filed an estimate of the costs to repair the damage and/or to replace the damaged items, dated October 4, 2020. The estimate, which I note is typewritten on plain paper, was provided by “Dave”. A.R. explained that Dave was a general contractor with DCL Custom Installations. He provided the following repair estimates:
 - 1) replace 18-inch cabinet and complete countertop because of water damage and a burn mark
(estimate range - \$1,850.00 – \$2,150.00)
 - 2) replace laminate floor in basement
(customer to supply materials; labour \$675.00 plus HST)
 - 3) re-anchor two basement cabinets
(material and labour - \$75.00)
 - 4) repair drywall dents; plaster, prime and paint as needed
(labour \$450.00 plus HST)
9. The highest estimate for the contractor’s work would be \$3,350.00 plus HST.
10. On April 13, 2021 A.R. filed a revised claim estimate with the Board, in which she increased the total amount of compensation for damages to \$4,475.00, plus \$2,325.00 in punitive damages and costs against the Tenant.
11. In that document, the Landlord states that she is “now amending to increase” the total costs. She lists the following nine items in the revised estimate, which is the documentary evidence she intends to reply upon:
 - 1) Punitive damages, increased to \$1,800.00 from \$1,200.00.

- 2) Dryer damage, which includes \$225.00 for “missed visits”; additional punitive damages of \$300.00; and \$600.00 for the cost of a new appliance; plus \$775.00 in relation to unspecified repairs to the refrigerator.
 - 3) Damage to a kitchen cabinet as the result of a refrigerator water leak: \$500.00.
 - 4) Damage to the kitchen counter as the result of a burn mark: \$525.00.
 - 5) Damage to the drywall, including the cost of re-anchoring two cabinets: \$875.00.
 - 6) Damage to the laminate floor in the basement, due to the Tenant installing industrial sewing machines in the basement, without the permission of the Landlord: \$1,000.00
 - 7) General cleaning: \$100.00
 - 8) General lawn maintenance: \$100.00
12. In the first repair estimate dated October 4, 2020, the Landlord includes quotes to repair or replace the following items that are not claimed in the application: kitchen cabinet; kitchen counter and two basement cabinets.
 13. In the second, revised estimate filed on April 13, 2021, the Landlord includes quotes to repair or replace the following items that are not claimed in the application: kitchen cabinet; kitchen counter; two basement cabinets; general cleaning and general lawn maintenance.
 14. The Landlord twice seeks to change the amount of damages claimed after the original application was filed.
 15. A.R. testified that the Tenant negligently caused damage to the refrigerator, to the dryer and to the floors and walls of the basement. In her submissions, the Landlord broadly refers to having filed photographs and videos which had been uploaded to a YouTube site. These were inaccessible to me at the hearing. I find that this evidence did not meet the criteria or requirements for document submissions pursuant the Board’s Practice Direction on Evidence. In any event, the Landlord did not refer to any specific video or photograph during her testimony.
 16. When asked by the Tenant, A.R. was unable to identify the age of the dryer or the refrigerator. When asked to confirm that she attended the rental unit on August 24, 2020, A.R. agreed that it was her spouse who actually attended at the unit and that she was not present.
 17. The Landlord did not present the contractor as a witness, or any other witness, to testify at the hearing.

The Evidence of the Tenant

18. The Tenant D.E. testified that he resided in the rental unit for a very short time. He stated that 9 days after he moved in, the Landlord notified the Tenant that he should vacate the unit.

19. D.E. testified that at the time he moved in, he and A.R. viewed the rental unit. D.E. pointed out some scratches on the wall, which he says A.R. acknowledged. He stated that when the movers transferred his furniture into the unit, they caused a small dent in the drywall when placing a table in the home. Additionally, he testified, a shoe rack fell on the floor, resulting in a little scratch on the floor. He referred to a text message to A.R. that he sent the next day, advising her of these damages. The Tenant told A.R. that he would pay for the cost of repairing these minor damages.
20. D.E. explained that the morning after he moved in, he observed a pool of water by the refrigerator. He cleaned the water up and left for Waterloo to pick up his family, who had not yet moved into the unit.
21. On August 24, 2020, after he had returned, the Landlord's spouse attended at the unit, he said. D.E. testified that it was on that day that his spouse first informed the Landlord's spouse that the refrigerator was still leaking and that the dryer was not producing any heat. D.E. followed up with a text message to A.R. on August 29, 2020. In the message, he reiterated that the dryer was not functioning properly and that the refrigerator was leaking. D.E. testified that he sent the message because the Landlord had not responded to the repair request from August 24th.
22. D.E. points to text messages between him and A.R. on August 30, 2020, in which D.R. claims that the Tenant had not cleaned the dryer vent, suggesting that this was the cause of the dryer issues. In the message thread, the Landlord proposed to the Tenant that he vacate the premises and "we can figure out how to break the lease for both of us". The Tenant replies: "Agreed."
23. Upon cross-examination, the Tenant acknowledged that he brought three industrial sewing machines into the unit, and he placed them in laundry room. He denies that he placed them in the basement area, where A.R. alleges the machines damaged the walls and floor.

Analysis

24. There is no evidence that the Landlord filed a request to amend the application with the Board, or served an amended application on the Tenant, as required by Rule 15 of the Board's Rules of Procedure. As a result, I find that the Landlord is limited to seeking the remedies requested in the original application, based on the claims therein.
25. Having carefully considered the evidence before me, I am not satisfied that the Landlord has established, on a balance of probabilities, that the Tenant wilfully or negligently caused any undue damage to the rental unit. The Landlord has failed to provide sufficient details or any reliable documentary or witness evidence to support any of the claims set out in the application.
26. For example, A.R. was unable to provide specific dates as to when the damage occurred, or even circumstantial evidence that the Tenant had caused such damage. No documentary or oral evidence was presented by a qualified contractor who had been tasked by the Landlord to investigate the cause of the damages claimed, and to assess

the scope of the alleged damage. Rather, the Landlord's claims appear to be based merely on speculation.

27. A.R. attempted to focus much of her testimony on complaints about the Tenant's conduct. However, there was no application before me based on an N5 Notice served on the Tenant. A.R. did not make a claim in her application alleging substantial interference with her reasonable enjoyment of the property, or with her lawful rights, privileges or interests. The application before me was an L2 application based on a claim for damages only, pursuant to section 89 of the Act. Therefore, I have not considered the Landlord's submissions as they relate to a claim of substantial interference.
28. For all of the above reasons, the Landlord's application shall be dismissed.
29. Had I granted the application, I note that the Board has no jurisdiction to award punitive damages, as held by the Divisional Court in *Campbell v. Maytown*, 2005 CanLII 49966 (ON SCDC).
30. This order contains all of the reasons for my decision within it. No further reasons shall be issued.

It is ordered that:

1. The Landlord's application is dismissed.

November 24, 2021

Date Issued

South West-RO
150 Dufferin Avenue, Suite 400, 4th Floor
London ON N6A5N6

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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.