



Order under Section 69
Residential Tenancies Act, 2006

File Number: SWL-53539-21

In the matter of: UNIT 503, 150 PARK STREET W
WINDSOR ON N9A7A2

Between: Andrew Dennis Landlord

and

David Pavao Tenant

Andrew Dennis (the 'Landlord') applied for an order to terminate the tenancy and evict David Pavao (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 Landlord has also applied for an order requiring the Tenant to compensate the Landlord for the damage. The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by video conference on October 18, 2021.

At 11:48, the Landlord and the Landlord's Representative Richard Lammers attended the hearing. The Tenant was neither present nor represented.

At the onset of the hearing, I asked if the representative of the company who provided the estimate to the Landlord would be called as a witness. Jim Hatt the Landlord's witness later called into the hearing.

Determinations:

1. The Tenant is in possession of the rental unit.
2. The rental unit is a 1 bedroom apartment in multi unit complex.
3. The lawful monthly rent is \$1075.00.
4. The Landlord collected a rent deposit of \$1,075.00 from the Tenant and this deposit is still being held by the Landlord.
5. Interest on the rent deposit is owing to the Tenant for the period from October 1, 2019 to August 7, 2021.

The N7 Notice and L2 Application

6. The Landlord served the Tenant with an N7 notice to end tenancy for causing serious problems in the rental unit or residential complex (N7 notice) on or around July 27, 2021. The N7 notice alleges:

You or someone visiting or living with you has wilfully damaged the rental unit or the residential complex.

7. Based on this notice, the Landlord filed an L2 application on or about August 4, 2021.
8. On or about July 2, 2021 after having served a proper notice of entry, the Landlord inspected the rental unit and alleges damages as follows:

Bathroom:

Bathroom walls, paint scratched
Tub spray painted blue
Vanity base cabinet panels removed, doors cracked

Kitchen:

Upper and lower cabinets cracked
Cabinet doors cracked
Counter top cracked and scratched
Backsplash tiles broken
Sink dented
Faucet bent,
Celing light missing parts
Fridge door dented, drywall holes
Paint due to damage

Front Hallway:

Drywall holes
Paint due to damage

Living room:

A/C unit bents broken
Drywall surrounding A/C has water damage

Bedroom:

Drywall holes
Paint all walls
Closet doors damaged by holes and cracked
Electrical outlets and switches damages and cracked
Floors in all rooms scrapes and stains by paint and grease and need replacement

9. The Landlord is seeking termination of tenancy and the amount of damages totalling \$35,000.00.
10. In order to be successful on this ground, the Landlord must establish that the Tenant, by his own actions, willfully caused damage in the rental unit.
11. In this case, the Board may only terminate the tenancy and evict the Tenant based on a finding that the Tenant wilfully damaged the rental unit.
12. Negligent damage occurs where a tenant takes some action which the tenant should reasonably have concluded would result in damage or alternately, in which a tenant fails to take a required action which the tenant should reasonably have known would result in damage. By contrast, wilful damage results from action taken by the tenant with the *intent* to do damage.

Evidence and Testimony

13. The Landlord's application relies on the allegations contained in the N7 notice.
14. The Landlord submitted into evidence a quote from Phoinix Management outlining the scope of work required to repair the damage allegedly caused by the Tenant totalling \$33, 080.75.
15. Included in evidence was an additional quote from GroTec Builders with an estimate to repair the damage allegedly caused by the Tenant in the amount of \$37 027.84.
16. A document marked as an invoice billed to the Landlord was included for \$2120.00, the cost to replace the door to the rental unit including the door, trim, dead bolt and handle. Upon closer review, this appeared to be a quote and not an invoice.
17. The Landlord also submitted approximately 50 photos of the rental unit including images pre tenancy as well as images of the rental unit during the tenancy.
18. According to the Landlord, the Tenant caused the damage by doing repair work within the rental unit on items such as bikes and motorcycle parts.
19. On the date of the hearing, I questioned the Landlord on the quote from Phoinix Management as reviewed by the Landlord. The Landlord was not able to provide answers to my questions.
20. Following the testimony of the Landlord I asked for Jim Hatt from Phoinix Management to provide a more substantive breakdown on the estimate.
21. Mr. Hatt said he was not prepared to provide a detailed analysis and asked for some time to review and return to the hearing.

22. It was the testimony of Jim Hatt that he is the owner of Phoinix Management and although not connected with the property, has worked on projects within the building for over 3 years.
23. Jim Hatt reviewed the quote and provided further assessment with respect to the kitchen and bathroom.

Analysis:

24. Subsection 63(1) of the Residential Tenancies Act (the 'Act'), 2006 states:

Despite section 62, a landlord may give a tenant notice of termination of the tenancy that provides a termination date not earlier than the 10th day after the notice is given if the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex,

- (a) wilfully causes undue damage to the rental unit or the residential complex; or
- (b) uses the rental unit or the residential complex in a manner that is inconsistent with use as residential premises and that causes or can reasonably be expected to cause damage that is significantly greater than the damage that is required in order to give a notice of termination under clause (a) or subsection 62 (1).

25. The type of damage that is contemplated by, and in fact a necessary element of an application under s.63(1) is damage that rises to a level that is higher than that which is typically caused to a unit or complex either intentionally or carelessly.
26. After reviewing the documents submitted into evidence, it is my view that the majority of photos depict an issue of clutter as opposed to damage.
27. In my view, the Landlord's description of the grounds for the N7 notice does not include sufficient detail to substantiate an N7 notice which, based on the requirements of the Act, requires expedited eviction.
28. It is undisputed that the Tenant caused some damage within the rental unit. The question before me is whether the Tenant intended to cause the damage. I find that the Tenant's actions in this instance constitute negligent damage and not wilful damage. Accordingly, the Landlord's application for termination cannot succeed on this basis.
29. Lastly, the Landlord requested compensation in the amount of \$35 000.00 with respect to the damage to the rental unit. Putting aside that the Landlord failed to demonstrate that the Tenant was responsible for wilful damage, he also failed to substantiate his valuation for the alleged damage.

It is ordered that:

1. The Landlord's application is dismissed.



December 30, 2021
Date Issued

Dana Wren
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.