



Order under Section 69
Residential Tenancies Act, 2006

File Number: TSL-13346-20

In the matter of: 3, 492 ARMADALE AVENUE
TORONTO ON M6S3X9

Between: Michelle Hearn Landlords
Ken Hearn

And

Cynthia Shantz Tenant

Michelle Hearn and Ken Hearn (the 'Landlords') applied for an order to terminate the tenancy and evict Cynthia Shantz (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.

This application was heard by video conference on May 18, 2021. The Landlord and the Tenant attended the hearing, at which time the Tenant testified that she consulted with Duty Counsel.

Determinations:

1. I recessed at the start of the hearing so that the Tenant could consult with Duty Counsel. When the hearing resumed the Landlords expressed interest in mediation, after which the Tenant testified that she did not see any point in proceeding with the hearing or mediation processes and that, as such, she intended to discontinue her participation in the proceeding. She then hung up and did not re-attend for the duration of the hearing. Duty Counsel then submitted that she was not representing the Tenant. Given the Tenant's election to no longer participate in the process, I decided to proceed with the hearing in her absence.
2. The Landlords testified that the Tenant was evicted from the unit pursuant to an enforcement action on October 7, 2020 with respect to Board order TSL-14980-20. As such, in relation to the present application, the Landlords are solely pursuing recovery of their expenses related to the damages claim. The Landlords incurred a fee of \$125.00 to file the application.
3. The Landlords testified that the residential complex is a house containing three residential rental units. The Tenant's tenancy started on September 20, 2018. The Tenant's unit and another unit occupy both the second and third floors and are accessed from the first floor

by a common stair well. The stair well leads to a small landing which allows access to the front door of each of these two units. The Landlords “fixed and painted” the stair well in 2019. The tenant who shares the stairwell with the Tenant told the Landlords that on January 21, 2020 the Tenant brought a couch into the Tenant’s unit using the common stair well. During the move, the sofa caused numerous scuffs, holes and indentations to the walls of the stairwell, as well as nicks to baseboard trim of the stairwell. While the Tenant attempted to repair some of the holes, the repairing plaster was applied in a less than smooth fashion. Thereafter, the Tenant admitted to the Landlords that she had damaged the stair well as claimed while moving the couch.

4. The Landlords submitted several pictures which show several scuff marks, indentations and holes in the walls of the stairwell, as well as roughly applied and off-colour plaster to various parts of the wall.
5. The Landlords also submitted an invoice dated February 3, 2020 from a contractor, RK Quality Service, in the amount of \$1,090.45 for the cost to “repair damage to the second floor stairway walls and baseboard and repaint all walls and baseboards”.
6. I accepted the Landlords’ uncontested and internally consistent evidence that the Tenant has wilfully or negligently caused undue damage to the residential complex as claimed by the Landlord. From the evidence, it is clear that the nature and extent of the damage is inconsistent with normal wear and tear. I also accepted the Landlords’ uncontested and internally consistent evidence that they have incurred costs of \$1,090.45 to repair this damage. However, since in their pleadings they only claims \$1,000.00 it would be inappropriate and unfair to the Tenant for me to allow the claimed amount to be amended upwards without notice to her. As such, I decided that the appropriate starting point of the award is \$1,000.00.
7. However, the Schedule to Ontario Regulation 516/06, “Useful Life of Work Done or Thing Purchased”, applies a 10-year depreciation timetable for interior painting related to common areas. Given that the Landlords fixed and repainted the stair well on an unspecified date in 2019, for the purpose of this hearing I resolved the ambiguity in this date in favour of the Tenant and deemed that this activity took place at the start of 2019. In light of the fact that the damage took place at the start of 2020, the painting and repair effort would have already experienced 10% depreciation when the damage occurred. As such, I determined that the appropriate amount of the award is \$900.00.

It is ordered that:

1. The tenancy between the Landlords and the Tenant terminated on October 7, 2020.
2. The Tenant shall pay to the Landlords \$900.00, which represents the reasonable costs of repairing the damage.
3. The Tenant shall also pay to the Landlords \$125.00 for the cost of filing the application.

4. If the Tenant does not pay the Landlords the full amount owing on or before May 31, 2021, the Tenant will start to owe interest. This will be simple interest calculated from June 1, 2021 at 2.00% annually on the balance outstanding.



May 20, 2021
Date Issued

Sean Henry
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.