



**Order under Section
Residential Tenancies Act, 2006**

Citation: Pinedale Properties Inc. v Md Akbar Hossain, 2023 ONLTB 34036

Date: 2023-05-03

File Number: LTB-L-029406-22

In the matter of: 1007, 7 CRESCENT PLACE
TORONTO ONTARIO M4C5L7

Between: Pinedale Properties Inc. Landlord

And

Md Akbar Hossain Tenant

Pinedale Properties Inc. (the 'Landlord') applied for an order requiring Md Akbar Hossain (the 'Tenant') to pay compensation and out-of-pocket expenses to the Landlord.

This application was heard by videoconference on April 21, 2023. The Landlord and the Tenant were represented at the hearing. Gail Kukor Lang represented the Landlord. The Tenant was represented by his son Abdullah Al Noor. Mr. Al Noor lives in the rental unit.

I heard evidence from Mr. Al Noor, Mario Gambelic, Luan Peci and Robert Shirer of RJ Shirer \$ & Associates Inc. Mr. Shirer was an expert produced by the Landlord concerning the cause of the fire that is at the root of this application. Mr. Al Noor did not dispute that Mr. Shirer was qualified to provide expert evidence.

Determinations:

Background

1. This application was filed due to a fire in the rental unit on October 12, 2020. That fire activated the building fire alarm in the residential complex and caused significant damage to the rental unit.
2. The Landlord sought \$11,371.58 in costs to repair the unit and \$1,721.56 in out-of-pocket expenses that it claims were incurred due to the Tenant 'substantially interfering' with its lawful right, privilege or interest.

3. This application was brought under sections 88.1 and 89 of the RTA, which say, in part:

88.1 (1) *A landlord may apply to the Board for an order requiring a tenant or former tenant to pay costs described in subsection (4) if,*

(a) while the tenant or former tenant is or was in possession of the rental unit, the conduct of the tenant or former tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant or former tenant is or was such that it substantially interferes or interfered with,

(i) the reasonable enjoyment of the residential complex for all usual purposes by the landlord, or

(ii) another lawful right, privilege or interest of the landlord;...

...

(4) The costs referred to in subsection (1) are reasonable out-of-pocket expenses that the landlord has incurred or will incur as a result of an interference described in clause (1) (a) and do not include costs that the landlord may recover in an application under section 88.2 or 89.

...

89 (1) *A landlord may apply to the Board for an order requiring a tenant or former tenant to pay reasonable costs that the landlord has incurred or will incur for the repair of or, where repairing is not reasonable, the replacement of damaged property if,*

(a) while the tenant or former tenant is or was in possession of the rental unit, the tenant or former tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant or former tenant wilfully or negligently causes or caused undue damage to the rental unit or the residential complex;...

4. The Landlord asserts that the negligence of the Tenant or another occupant of the rental unit resulted in the fire.

5. Mr. Al Noor testified that neither he nor the Tenant were home when the fire occurred. According to Mr. Al Noor, two roommates were the only people in the unit when the fire started. There was no evidence from those two individuals. Mr. Al Noor testified that they were international students and the Tenant does not have their contact information. There was no request by the Tenant for an adjournment to try to locate them so that they could provide evidence.

6. There was no dispute that there was a fire in the kitchen of the rental unit in the morning hours of October 12, 2022. There is also no serious dispute that the fire was started by the right front element of the kitchen stove and spread to the ceiling and wall.
7. There is no dispute that the damage caused to the rental unit by the fire was by any measure 'undue'. Mr. Al Noor conceded that the fire caused significant damage.
8. There were two issues before me that relate to the fire: (a) was the fire started as a result of the negligence of the Tenant or an occupant of the unit; and, if so, (b) what reasonable costs did the Landlord incur to repair the damage caused by the fire. A third issue relates to the Landlord's claim for out-of-pocket expenses.

Cause of the Fire

9. Mr. Shirer's opinion was that the fire was caused by the right front burner of the stove being turned on and left unattended such that the heat ignited either something left on the element or something near the element. If that is correct, then it would constitute negligence. It is, in my view, negligent for a person to leave an active stove unattended. **[See, for example, *TNL-01102-18 (Re)*, 2018 CanLII 113919 (ON LTB)]**
10. After considering the evidence, I am satisfied that it is more likely than not that the fire was caused by the right front burner of the stove being turned on by one or the other of the Tenant's roommates and left unattended. I accept Mr. Shirer's evidence that the knob that controls the right front burner of the stove was left in the on position. I acknowledge that Mr. Shirer was not able to determine what exactly ignited due to the damage caused by the fire, but that does not change my view as to the root cause of the fire.
11. Mr. Al Noor asserted that the fire might have been caused by the stove not functioning properly. He pointed out that he had complained to the Landlord about certain elements not working and the knobs being loose. He referred me to a website that indicated that a common problem with stoves involved issues with the functioning of the knobs that control the elements. Mr. Al Noor also prepared a helpful model to demonstrate his theory as to how a defective or broken knob might have resulted in the right front element being left on.
12. Both Mr. Al Noor and I raised with Mr. Shirer whether, in his view, the fire could have resulted from mechanical issues with the stove. Mr. Shirer's evidence, which I accept, is that he tested the stove, including the knobs, and found them to be functioning correctly.
13. Mr. Al Noor suggested that a defect in the fire detection system in the unit may have resulted in the fire not being detected before it got to the point that it did. There was, however, no evidence that the fire detection system in the unit was defective or that it did not detect the fire at an early stage. As noted above, Mr. Al Noor was not at home when the fire started and the roommates who were in the unit did not provide evidence.

14. Mr. Al Noor asserted that there was a 'clean kitchen' policy in place in the unit due to the presence of cockroaches. The existence of such a policy does not, in my view, mean that the fire was not caused by negligence. The fire was caused by a person, or persons, leaving an 'active' stove unattended.

Costs Incurred to Repair—\$11,156.88

15. The Landlord claimed that it incurred \$11,371.58 to repair the damage caused by the fire and filed receipts to substantiate its claim. I am awarding the Landlord \$11,156.88.
16. Mr. Al Noor disputed the Landlord's claim for \$214.70 to repair windows in the bedrooms of the unit. The Landlord conceded that it could not establish a linkage between the damaged windows and the fire, and reduced its claim by the \$214.70.
17. Mr. Al Noor asserted that the Landlord didn't need to incur \$4,250.50 to repaint the entire unit. He (correctly) noted that the fire did not spread to the bedrooms. However, I accept Mr. Peci's evidence that the fire resulted in smoke throughout the unit, which needed to be addressed.
18. Mr. Al Noor suggested that there may have been other more cost-effective ways for the Landlord to address the smoke damage, but the Tenant did not produce any evidence that any other way to address the smoke damage—a 'deep clean' for example—would have cost less than repainting the entire unit. I find that the cost incurred by the Landlord to repaint the unit was reasonable.
19. I have considered the Landlord's obligation under section 16 of the RTA to mitigate its damages.
20. In my view, a landlord who has insurance that will provide coverage for damages to a rental unit or residential complex is obliged to make a claim on that insurance before seeking to recover from a tenant, unless there is a good reason for not doing so.
21. While the evidence presented by the Landlord concerning its insurance was not ideal—the Landlord did not file any insurance-related documents until I requested that it do so after the hearing had commenced and the documents that were filed were not complete—I am prepared to accept Mr. Gambelic's evidence that the deductible payable under the Landlord's insurance is greater than the amount the Landlord paid to repair the unit. In those circumstances, the Landlord was not, in my view, required to make a claim under its insurance.

Out-of-Pocket Expenses—\$0

22. The Landlord claimed \$1,721.56 as being the reasonable out-of-pocket expenses incurred by the Landlord based on the Tenant's substantial interference. This represents the fees that the Landlord paid Mr. Shirer's company.

23. The Landlord asserts that the Tenant ‘substantially interfered’ by disputing the Landlord’s claim that the fire was caused by negligence thereby causing it to have to retain Mr. Shirer. The relevant part of the L2 application says:

The tenant caused a fire in the rental unit on October 12, 2021. The tenant claimed the fire was the result of a malfunctioning stove. The Landlord hired a consulting forensic engineering company to investigate and it was determined that the cause of the fire was that the tenant, or someone in the unit, left a burner in the on position on the stove that ignited combustibles in close proximity to the burner...

24. In my view, the Landlord is not entitled to recover the \$1,721.56 because there was no ‘substantial interference’ by the Tenant with any lawful right, privilege or interest of the Landlord.
25. The Landlord had no ‘right, privilege or interest’ that required the Tenant to not oppose the L2 application. Quite the opposite. The Tenant had the right to dispute the L2 application and to require that the Landlord produce evidence to establish that the damage resulted from negligence.
26. To the extent that is relevant, I find the Tenant disputed the application in good faith. While I ultimately did not accept Mr. Al Noor’s assertions as to how the fire might have started, he raised them in good faith. Quite frankly, were it not for Mr. Shiner’s expert report, I am not sure that I would have found that the fire resulted from negligence in the face of Mr. Al Noor’s arguments as to what may have caused the fire. The stove was obviously old and the Tenant had made complaints concerning the functioning of the elements and the knobs that control the elements.
27. There are circumstances where the LTB might award a party the costs incurred in bringing or defending an application, including out-of-pocket expenses. **[See Rule 23.2]** The Landlord did not, however, make a request for costs and, if it had, I would have found that this is not a case where it would have been appropriate to order that the Tenant pay the Landlord costs. Costs are generally awarded by the LTB only in those circumstances where the conduct of a party is unreasonable. **[See 1782855 Ontario Ltd v Hewitson, 2022 CanLII 54162 (ON LTB)]** I do not think that the Tenant was in any way unreasonable. Quite the opposite in fact. Mr. Al Noor presented his case in a fair (and effective) manner, and acted reasonably throughout the hearing.

Filing Fee—\$201.00

28. Notwithstanding having not recovered the full amount it claimed, the Landlord was, in my view, successful on this application and I am ordering that the Tenant pay the application fee. **[See Rule 23.1]**

Tenant Insurance

29. The Landlord asserted that the Tenant did not, at the time of the fire, have the insurance coverage required by the applicable tenancy agreement.
30. The fact that the Tenant might not have had insurance is not, in my view, a relevant consideration under section 89.
31. While the failure on the part of a tenant to have the insurance required by the applicable tenancy agreement might constitute 'substantial interference', the Landlord has not made that assertion.

Time for Payment

32. Mr. Al Noor requested that, if I ordered the Tenant to pay the Landlord a significant amount of money, I give the Tenant two years to pay. The Landlord requested that the Tenant be required to pay any amount awarded in 30 days. I have determined that the Tenant should be given until August 31, 2023 to pay the Landlord.

Conclusion

33. In conclusion, I find that it is more likely than not that the fire was caused by negligence on the part of an occupant or occupants of the rental unit. I further find that the Landlord has incurred \$11,156.88 in costs to repair the damage—which damage I find to be undue—caused by the fire and is entitled to the \$201.00 filing fee.
34. I note for the benefit of the Tenant that the Landlord did not ask that the LTB terminate the tenancy or evict him. This is a money judgment that the Landlord may attempt to enforce, but failure to pay the amount I am awarding be paid will not result in the termination of the tenancy or eviction, so long as the Tenant continues to pay the lawful rent and there are not other grounds aside from the fire to terminate the tenancy.

It is ordered that:

1. The Tenant shall pay to the Landlord \$11,357.88.
2. If the Tenant does not pay the Landlord the full amount owing on or before August 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from September 1, 2023 at 6.00% annually on the balance outstanding.

May 3, 2023

Date Issued

15 Grosvenor Street, Ground Floor,
Toronto ON M7A 2G6

E. Patrick Shea
Vice Chair, Landlord and Tenant Board

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