



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: ST. PAUL'S LAMOREAUX CENTRE v Clark, 2023 ONLTB 15455

Date: 2023-01-18

File Number: LTB-L-013577-22

In the matter of: 274, 3333 FINCH AVENUE EAST
TORONTO ON M1W2R9

Between: ST. PAUL'S LAMOREAUX CENTRE Landlord

And

Kevin Clark Tenant

ST. PAUL'S LAMOREAUX CENTRE (the 'Landlord') applied for an order to terminate the tenancy and evict Kevin Clark (the 'Tenant') because the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment of the residential complex by the Landlord or another tenant, or has substantially interfered with a lawful right, privilege or interest of the Landlord or another tenant. The Landlord also applied for an order to terminate the tenancy because the Tenant, another occupant of the rental unit or someone they permitted in the residential complex have wilfully or negligently caused undue damage to the premises.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

ST. PAUL'S LAMOREAUX CENTRE (the 'Landlord') also applied for an order requiring Kevin Clark (the 'Tenant') to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

This application was heard by videoconference on January 11, 2023.

Only, the Landlord's agent Vanett Hart (VH), witness Kurtis Douglas (KD) and legal representative Terrence Pochmurski (TP) attended the hearing.

As of 12:14 pm, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations and Reasons:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy between the Landlord and Tenant shall be terminated as detailed below.
2. The Tenant is in possession of the rental unit.
3. The rental unit is a bachelor apartment in a multi-unit complex.
4. The tenancy began around March 21, 2019.
5. The monthly rent is \$402.65 and due on the 1st of each month.

First and Second N5 Notices

6. On January 18, 2022, the Landlord served the Tenant with an N5 notice alleging that the Tenant has caused damage in the rental unit due to poor hygiene which has also resulted in pests and odour that substantially interfered with the reasonable enjoyment of the residential complex by the Landlord or another tenant, or has substantially interfered with a lawful right, privilege or interest of the Landlord or another tenant.
7. Section 68(1) of the Residential Tenancies Act, 2006 (the 'Act') states:

A landlord may give a tenant notice of termination of the tenancy if,

(a) a notice of termination was given to the tenant under section 62, 64 or 67, and (b) more than seven days but less than six months after the notice mentioned in clause (a) was given to the tenant, an activity takes place, conduct occurs or a situation arises that constitutes grounds for a notice of termination under section 60, 61, 62, 64 or 67, other than an activity, conduct or a situation that is described in subsection 61(1) and that involves an illegal act, trade, business or occupation described in clause 61(2) (a).

8. Pursuant to section 68(1) of the Act, the Landlord served the Tenant with a second N5 Notice on January 27, 2022. The Landlord's application is based on the second N5 Notice. Accordingly, the Landlord need not prove the truthfulness of the allegations in the first N5 Notice, only that it meets the statutory requirements contained in section 64 of the Act. I am satisfied that it does.

9. I acknowledge it would be prejudicial to a tenant if the allegations in a first N5 Notice were without any foundation and made simply for the purpose of allowing a landlord to serve a second, non-voidable notice pursuant to section 68(1). I am satisfied that is not the case in the matter before me.
10. The second N5 notice contains allegation that the Tenant continues to exhibit poor personal care and the excessive fecal and urine waste had damaged the rental unit, been present in the shared laundry facility and an inspection of the rental unit unveiled extremely poor sanitary condition which had led to extensive on-going remediation efforts by the Landlord.
11. The Landlord submitted as evidence, photos, invoices, quotes and various communication to support their position.
12. Although this order does not specifically address each piece of evidence individually or reference all of the testimony, I have considered all of the evidence and oral testimony when making my determinations.

Landlord's Testimony and Evidence

13. VH is the Director of Facilities and Properties for the Landlord and has first hand knowledge of the circumstances that gave rise to the N5 notice(s). VS said that the Tenant has consistently maintained the rental unit in an "unbearable" state. She said that the Tenant's poor hygiene results in fecal matter and urine persistently on his person and within the rental unit. Then, she said the state of the rental unit is serious cause for concern due to persistent pests, filth and odour. This effects the other tenants daily and she receives numerous and consistent complaints.
14. VH also said these issues started at the onset of the tenancy and the Landlord has attempted to provide support to the Tenant by way of retaining professional cleaners, pest control and the Landlord has attempted to work with the Tenant's case manager to find a solution to the issue.
15. VH said, the Tenant has never discussed with the Landlord any conditions that would lead to the behavioural issues that gave rise to the N5 notice(s).
16. KD, witness for the Landlord is Team Leader for Janitorial and Custodial Services since 2016. KD knows the Tenant and has first-hand knowledges of the allegations in the N5 and circumstances of the Tenant. KD testified that the Tenant has been provided weekly cleaning services at an expense to the Landlord at approximately \$2,700.00 per month.
17. Then KD said that despite the routine cleaning, due to the behaviour to the Tenant, the unit returns to pre-cleaning condition within days. KD said he has personally attended the

rental unit on several occasions and states the rental unit has fecal matter and urine throughout the unit; on floors, walls, appliances, bedding and clothing. He said that due to the volume of bio-hazard substances, the damage to the unit could not be assessed without proper clean up. KD also said that the rental unit has been identified as the “hub” for pest activity and other units in the complex have been affected by pests.

18. KD also testified and provided documentary evidence with respect to the Tenant’s fecal matter in the common laundry facility and efforts made to attempt to clean the Tenant’s unit. KD said the condition of the unit caused a bio-hazard concern that necessitated specialists. He said the in-house cleaning staff were not equipped to perform cleaning in the current state of the unit. KD testified that the initial expert cleaning company was contacted, but they first required the unit to be cleaned by those specializing in biohazardous protocols.
19. Through out his testimony, KD spoke to the various quotes, invoices and steps taken by the Landlord to deal with the Tenant and the condition of the rental unit. He said the Landlord, outside of the weekly cleaning service to the Tenant, has spent in excess of \$12,000.00 and the Tenant has made minimal effort to work with the Landlord to find a solution.
20. A detailed analysis of the Landlord’s remediation efforts and associated costs was conducted at the hearing.
21. The Tenant did not attend the hearing to challenge the Landlord nor defend his position.

The Damage Claim

22. The final claim in the application is made by way of s.89(1) of the Act. That provision reads as follows:

A landlord may apply to the Board for an order requiring a 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 the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex wilfully or negligently causes undue damage to the rental unit or the residential complex and the tenant is in possession of the rental unit. (Emphasis added)

23. This application claims an amount of \$11,000.00 under s.89(1) of the Act, for the specialized bio-hazard service that was required to clean the rental unit to a “safe” condition to allow the Landlord to attend to other issues in the Tenant’s unit. This trauma clean up was required before any other staff or maintenance could be facilitated in the unit.

24. VH and KD testified to the extent of work needed in the rental unit including: specialized cleaning and decontamination, repairs to walls, floors and fixtures. To support this claim, the Landlord provided invoices from Janpro Universal, Dome Services Group, Canada Decon Ltd., Terminex Canada, VIP Renovations. As previously stated, the total of these invoices exceeds the amount claimed in the Landlord's application. In the absence of the Tenant, the Landlord did not request to amend their application.
25. Based on the evidence adduced at the hearing, I find that the Tenant has substantially interfered with the Landlord's and other tenant's reasonable enjoyment of the multi-unit complex, and has substantially interfered with a lawful right, privilege or interest of the Landlord when he did not maintain the unit in a reasonable state of cleanliness and when the lack of cleanliness has caused pest and other issues for tenants at the residential complex. I also find that the Tenant's behaviour has led to significant damage in the rental unit that necessitated various experts for remediation purposes.

Law and Analysis

26. In order for an application for compensation for damages made pursuant to subsection 89 of the Act to succeed, a landlord must establish the following:
 - a) There was property damage to the rental unit or residential complex;
 - b) The damage is "undue" meaning that it is not normal wear and tear and it is not insignificant; and
 - c) The damage was a result of wilful or negligent conduct by the Tenant, occupant or guest.
27. If all of these factors are met, then the Board can award the Landlord's the reasonable cost of repair, or the replacement cost if it is not reasonable for the damage to be repaired.
28. As can be seen by this wording, the Board's jurisdiction with respect to compensation claims is quite limited. It is only with respect to the reasonable cost to repair or replace "damaged property". In other words, it is not every expense that a landlord incurs as a result of the wilful or negligent conduct of a tenant that will be recoverable under s. 89(1). It must be for repair or replacement of damaged property.
29. In this instance case, the Landlord claims the mandatory remediation of the bio-hazardous condition of the rental unit should be considered under s.89(1) of the Act, for if it were not for the behaviour of the Tenant, such specialized treatment would not be required. As a result, the Landlord incurred costs to disinfect, clean and prepare the rental unit before any other work could commence.
30. The Landlord takes the position that the fecal matter and urine saturation caused damage to the walls, floor and fixtures and the walls, floors and fixtures could not be repaired or

replaced without the trauma clean up that was required by the various contractors. As such, the Landlord seeks reimbursement for the specialized cleaning of the unit in the amount of \$11,000.00.

31. Relying on *Mortguard v. Peters* TSL-18929, the Member states at paragraph 49:

Finally, the Landlord's monetary damage claim included an amount for cleaning the rental unit. The Landlord obtained a quote of \$4,410.00 for removing all of the garbage in the rental unit, and for cleaning and disinfecting it. It is readily apparent from the evidence before me that this work will have to be done before any of the damage in the rental unit can be addressed. In her evidence the Tenant fully acknowledged being responsible for the garbage in the rental unit as it is her means of protecting herself from harmful rays and chemicals. It was also apparent from the Tenant's evidence that she will not clean the rental unit herself, even if ordered to do so. As a result, I am satisfied based on the evidence before me that part of the reasonable cost the Landlord will incur to repair the damage to the rental unit caused by the Tenant's wilful or negligent conduct is the cost of cleaning out the rental unit. As a result, an order will go requiring the Tenant to pay to the Landlord an additional \$4,410.00.

32. I will also note that the Member's decision was upheld by the Ontario Superior Court of Justice Divisional Court decision; file NO: 436/09 dated April 27, 2010.
33. Accordingly, I find that the Landlord incurred costs for the required remediation to ensure the contractor(s) and employees has a safe and secure environment prior to commencing the work to bring the unit back to an acceptable condition.
34. Clearly the Landlord has a legal interest in the condition of the rental unit because it has the obligation to maintain the rental unit under section 20 of the Act. In addition, section 33 of the Act states: "The tenant is responsible for ordinary cleanliness of the rental unit, except to the extent that the tenancy agreement requires the landlord to clean it." Based on the photographic evidence and testimony, it is clear that the Tenant has not kept the rental unit in a state of ordinary cleanliness. The Landlord also has a legal interest in renting units adjacent to the Tenant's and I am satisfied from the evidence before me that the odour and pests emanating from the Tenant's rental unit has substantially interfered with other tenants' reasonable enjoyment and because some of the units near the Tenant's unit are uninhabitable. As a result, I find that the Tenant's failure to maintain the rental unit in a state of ordinary cleanliness has substantially interfered with a lawful interest of the Landlord's and with the reasonable enjoyment of other tenants.
35. Given the above and my knowledge of similar like cases before the Board, I am satisfied that the actions of the Tenant resulted in trauma clean up in an amount that exceeds the Landlord's claim of \$11,000.00. An order will issue accordingly.

Daily Compensation and Rent Deposit

36. The Landlord said the Tenant was not in arrears of rent as of the date of the hearing.
37. Based on the Monthly rent, the daily compensation is \$13.24. This amount is calculated as follows: $\$402.65 \times 12$, divided by 365 days.
38. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
39. The Landlord collected a rent deposit of \$402.65 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$4.83 is owing to the Tenant for the period from April 1, 2021 to December 31, 2022.
40. In accordance with subsection 106(10) of the Residential Tenancies Act, 2006, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

Relief from Eviction

41. I turned my mind to the circumstances of the Tenant. VH said the Tenant is approximately 55 years of age, lives alone and is not employed. The Landlord has not been made aware of any physical or mental circumstances of the Tenant.
42. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Residential Tenancies Act, 2006 (the 'Act'), and find that it would not be unfair to grant relief from eviction pursuant to subsection 83(1)(a) of the Act.
43. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before January 29, 2023.
2. If the unit is not vacated on or before January 29, 2023, then starting January 30, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after January 30, 2023.

4. The Tenant shall pay to the Landlord \$3,793.74, which represents compensation for the use of the unit from March 1, 2022 to January 11, 2023, less any monies already paid to the Landlord, less the rent deposit and interest the Landlord owes on the rent deposit.
5. The Tenant shall also pay the Landlord compensation of \$13.24 per day for the use of the unit starting January 12, 2023 until the date the Tenant moves out of the unit.
6. The Tenant shall pay to the Landlord \$11,000.00, which represents the reasonable costs of repairing and or replacing the damaged property.
7. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
8. The total amount the Tenant owes the Landlord is \$11,186.00.
9. If the Tenant does not pay the Landlord the full amount owing on or before January 29, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 30, 2023 at 5.00% annually on the balance outstanding.

January 18, 2023

Date Issued

Dana Wren

Member, Landlord and Tenant Board

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

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

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on July 30, 2023 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.