



Order under Section 41
Residential Tenancies Act, 2006

File Number: SWT-51345-21

In the matter of: 4066 11TH CONCESSION ROAD
MAIDSTONE ON N0R1K0

Between: Alain Katembo Tenant

and

Kevin Scott Mackenzie Landlord

Alain Katembo (the 'Tenant') applied for an order determining that Kevin Scott Mackenzie (the 'Landlord') entered the rental unit illegally, altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenant replacement keys and substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of the Tenant's household.

This application was heard by videoconference on August 31, 2021.

The Tenant and the Landlord attended the hearing.

Determinations:

1. It was not contested that the Landlord had the Tenant's possessions removed from the rental unit and the locks changed without obtaining an order from the Board terminating the tenancy.
2. I also find that the rental unit was not abandoned since the Tenant's possessions remained in the rental unit until the Landlord removed them.
3. In light of the above, I find that the Landlord entered the rental unit illegally, altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenant replacement keys and substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant.
4. At the hearing, the only remedy requested by the Tenant was that the Landlord compensate the Tenant for missing and damaged property. More specifically, the Tenant requested compensation for a damaged 43 inch flatscreen television, a damaged printer, and a missing 70 inch flatscreen television.

5. The Tenant testified that these three items were in the rental unit and undamaged when he left the country in March 2021.
6. The Tenant provided photographs of the damaged printer and the damaged 43 inch flatscreen television which he found on the porch outside the rental unit after the locks were changed. The Tenant provided a receipt for the purchase of the 70 inch flatscreen television which was not on the porch with his other possessions and has not been returned to him.
7. The Landlord testified that the Tenant's possessions were removed from the rental unit by the Landlord's agent(s) and that the Landlord was not personally present when this occurred.
8. The Landlord claimed that the missing television was not in the rental unit when the Tenant's possessions were removed from the rental unit. The Landlord alleged that the missing television was taken by someone else the Tenant permitted into the rental unit when the Tenant was out of the country and prior to the date the Landlord removed the Tenant's possessions from the rental unit. The Landlord alleged that the Tenant owed money to the person the Tenant permitted into the rental unit and suggested that the person took the television for this reason.
9. The Landlord also alleged that the damaged printer and the damaged television were damaged prior to the date the Landlord removed the Tenant's possessions from rental unit.
10. As the Landlord was not present when items were removed from the rental unit, he has no direct knowledge regarding the items removed or their condition. The Landlord's assertions that items were damaged or taken by someone else are speculative. I am satisfied on a balance of probabilities, based on the photographic evidence of the printer and 43 inch flatscreen television and the receipt for the 70 inch flatscreen television, that the Tenant possessed these items and that they were in the rental unit. I am not satisfied that the Landlord has proven on a balance of probabilities that items were damaged or removed from the rental unit prior to the date the Landlord removed the Tenant's possessions from the rental unit. As a result, I find the Landlord liable for the damaged and missing items.
11. The Tenant requested \$150.00 for the printer, \$2,500.00 for the 70 inch flatscreen television, and \$1,900.00 for the 43 inch flatscreen television for a total of \$4,550.00.
12. I find this amount to be reasonable given the receipt for the 70 inch flatscreen television and my knowledge of like and similar cases.

It is ordered that:

1. The Landlord shall pay to the Tenant \$4,550.00. This represents the costs that the Tenant will incur in replacing property that was damaged and disposed of as a result of the Landlord's breach.

2. The Landlord shall also pay to the Tenant \$48.00 for the cost of filing the application.
3. If the Landlord does not pay the Tenant the full amount owing on or before September 26, 2021, he will start to owe interest. This will be simple interest calculated from September 27, 2021, at 2.00% annually on the balance outstanding.

September 16, 2021

Date Issued



Richard Ferriss

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.