



Order under Section 69
Residential Tenancies Act, 2006

File Number: SOL-21100-21

In the matter of: 429 DAVID STREET
WELLAND ON L3B2B7

Between: Robert / Petrie C/o Sjp Parlaegal Services Landlord

and

Christianna Marr Tenants
Douglas Marr

Robert / Petrie C/o Sjp Parlaegal Services (the 'Landlord') applied for an order to terminate the tenancy and evict Douglas Marr and Christianna Marr (the 'Tenants') because they, 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 has also applied for an order requiring the Tenants to compensate the Landlord for the damage.

This application was heard by videoconference on August 11, 2021.

The Landlord and the Landlord's Legal Representative J. Priestley and Tenant C. Marr attended the hearing.

Determinations:

1. For the reasons that follow, the Landlord's application is granted as the Tenants have wilfully or negligently caused undue damage to the rental unit.

Background Facts

2. The Tenants began residing in the rental unit in October 2019 and pay a monthly rent in the amount of \$1,700.00.
3. The Landlord served the Tenants with an N5 Notices of Termination on March 31, 2021 alleging that the Tenants wilfully or negligently damaged the rental unit or the residential complex. (N5 notice)
4. The Notice of Termination alleged substantial damage to the property was found by the Landlord, Wendy Bonenfant, when she inspected the property on March 20, 2021; the N5 notice attaches a 3 page list of damage to the rental property. (Exhibit 1) The N5 notice claimed \$22,046.25 for repair or replacement of damaged property.

5. The Landlord obtained quotes for the repairs and seeks compensation in the following amounts based on the quotes:
 - \$225.00 for electrical work and repairs in the rental unit; (Exhibit 2) and
 - \$9,040.00 from Tony Spagnolo for contracting services for the repairs. (Exhibit 3)

N5 Notice Voiding Period and Claims

6. The Landlord served the Tenant with an N5 Notice of Termination ('N5 notice') which indicates that the grounds for the notice are wilful or negligent damage to the rental unit or the residential complex.
7. On an N5 notice, a tenant is provided the opportunity to void the notice by paying the cost to replace or repair the damaged property within seven days of being served with the notice. In this case, the voiding period was from March 31, 2021 to April 7, 2021 inclusive.
8. At the hearing the Landlord testified that the Tenants failed to pay the costs to repair or replace the damaged property within the voiding period. Based on the uncontested evidence before the Board, I am satisfied on the balance of probabilities that the N5 notice for damages was not voided in accordance with subsection 62(3) of the Act, as the costs for repair for the damage was not paid within the voiding period and had not been paid to the date of the hearing.

Evidence of the Parties

9. The Landlord testified as to the damages in the rental unit and entered into evidence 153 photographs that she had taken, showing the disrepair of the rental unit at her inspection of the rental unit on March 20, 2021. (Exhibit 4)
10. The Landlord testified that she believes that the Tenants damaged the property as outlined in the N5 notice and that the work listed in the N5 notice and the estimates received from her contractors are a true and accurate reflection of the damage and required repairs.
11. The Landlord testified that she lived in the property prior to the Tenants and the property was in a good state of repair when the Tenants moved in. The Landlord testified that she was never advised by the Tenants of any maintenance or repair issues in the rental unit.
12. The Tenant Christianna Marr ('CM') did not dispute that the Tenants had caused some of the damage to the property. She asserted that some items were a matter of disrepair to the rental unit. CM testified that neither of the Tenants had advised the Landlord about the disrepair issues as CM "was afraid of the Landlord." CM could not advise the Board why she was afraid of the Landlord and why neither of the Tenants advised of any outstanding repair or maintenance issues.

13. CM testified that she did not believe the following damages were caused by the Tenants, and were repair issues:
- Loose outlets
 - Damage to cabinets – it is only wear and tear of cheap cabinets
 - Light fixtures
 - The screens came loose with use
 - The faucet broke in ordinary use when pulled on
 - The doors are old, and on an occasion got stuck and she had to force it open to get child out of the room, so doors and doorknobs were removed by the Tenants
 - Uncertain how freezer door was dented, but could have been caused by child playing with cars and banging door, but she was uncertain that this was the case
14. The Tenant CM testified that the Tenants take responsibility for some of the disrepair, but other issues were petty or maintenance the Landlord failed to complete.
15. The Tenant testified that they have resided in the unit for 2 years and have 3 children. She testified that she homeschools her children. She testified that the Tenants intend to vacate the rental unit and asked for 30 to 60 days to vacate the unit if the tenancy is terminated by this application.

Wilful or Negligent Damage

16. Subsection 34(1) of the Act states that a tenant is responsible for repair for undue damage that is caused wilfully or negligently.
17. Further, a landlord may give a tenant a notice of termination of the tenancy under subsection 62(1) of the Act for wilful or negligent undue damage to the rental unit or residential complex.
18. Also section 89 of the Act states the following:
- 89(1) 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.
19. On an L2 Application the Landlord bears the burden of proof, on a balance of probabilities, to prove that the Tenants wilfully or negligently caused damage to the rental unit or residential complex.
20. Based on the uncontested evidence before the Board, the Tenants have caused some, if not all, of the damages to the rental unit. I find the Tenant CM's evidence to be

inconsistent and unreliable as at times she testified that they had advised the Landlord of outstanding maintenance issues and also testified that she did not advise the Landlord as she was fearful of her. I find on a balance of probabilities that the Tenants caused the damages as presented in the N5 notice and as demonstrated in the photographs in Exhibit 4. I accept the Landlord's testimony that she had on-going contact and communication with the Tenants and the Tenants did not advise of maintenance or repair issues and that she lived in the rental unit prior to the Tenants and it was in a state of good repair.

21. On a balance of probabilities, I am satisfied on the evidence before the Board that the Landlord has proved that there is undue wilful or negligent damage to the rental unit as outlined in the N5 notice of termination and that it was caused by the Tenants.
22. The Landlord presented two quotes (Exhibits 2 & 3) demonstrating the cost for repairs and replacement of the damaged property. I am satisfied on the evidence that this is the reasonable cost to repair or replace damaged property in the rental unit. I find that the Tenant did not provide sufficient evidence to contradict the evidence of the Landlord regarding the costs.
23. Based on the evidence before the Board, I find that the Tenants have wilfully or negligently caused undue damage to the rental unit and the Landlord will incur costs of \$9,265.00 inclusive of HST, to repair the damage and replace property that was damaged and cannot be reasonably repaired.
24. I have considered all of the disclosed circumstances of both the Landlord and the Tenants in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until October 15, 2021 pursuant to subsection 83(1)(b) of the Act. The Tenant testified that she will require time to find alternative housing for her family and she will be provided time to do so. The Landlord did not demonstrate any urgency in recovering possession of the unit that would cause me to believe that 30 days is unreasonable.
25. The Landlord has incurred the cost of \$186.00 for filing the application and is entitled to reimbursement of those costs.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated, as of October 15, 2021. The Tenants must move out of the rental unit on or before October 15, 2021.
2. The Tenants shall pay to the Landlord \$9,265.00, which represents the reasonable costs of repairing the damage and/or replacing the damaged property.
3. The Tenants shall also pay to the Landlord \$186.00 for the cost of filing the application.
4. If the Tenants do not pay the Landlord the full amount owing on or before September 27, 2021, they will start to owe interest. This will be simple interest calculated from September 28, 2021 at 2.00% annually on the balance outstanding.

5. If the unit is not vacated on or before October 15, 2021, then starting October 16, 2021, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. 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 October 16, 2021.



Nicola Mulima
Member, Landlord and Tenant Board

September 16, 2021
Date Issued

Southern-RO
119 King Street West, 6th Floor
Hamilton ON L8P4Y7

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 expires on April 16, 2022 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.