



Order under Section 69
Residential Tenancies Act, 2006

File Number: HOL-10533-21

In the matter of: 203 BEDROOM 2, 136 JAMES STREET
ST.CATHARINES ON L2R0B7

Between: Penn Terra Group Ltd. Landlord

and

Khalid Ali Tenant

Penn Terra Group Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Khalid Ali (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 Landlord has also applied for an order requiring the Tenant to compensate the Landlord for the damage; and 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 or lawful right, privilege or interest of the Landlord or another tenant. The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard via videoconference on September 1, 2021. The Landlord's legal agent, A. Obermaier, and the Landlord's legal representative, L. Cruz, attended the hearing. As of 11:09 a.m., the Tenant was not present or represented although properly served with notice of this hearing by the Board.

Determinations:

1. The Landlord alleges that the Tenant or an occupant of the rental unit or a person permitted in the residential complex by the Tenant has wilfully or negligently caused undue damage to the rental unit or residential complex. The Landlord also alleges the Tenant or an occupant of the Tenant's rental unit or a person permitted in the residential complex by the Tenant has substantially interfered with the Landlord or another tenant's reasonable enjoyment of the residential complex and/or lawful rights, privileges or interests. The Landlord served a notice of termination on the Tenant, with a termination date of April 13, 2021.
2. The Tenant vacated the unit on August 25, 2021. As the Tenant vacated the unit, the issue of termination is moot. As such, the only live issue in this application was damages pursuant to s. 89(1) of the Act.

3. By way of background, the Tenant resided in one bedroom of a four-bedroom unit. Each Tenant entered a separate lease agreement with the Landlord and shared common areas, including the kitchen, bathroom and living room. Each bedroom is furnished.
4. The Landlord's claim under s. 89(1) is with respect to the following: damages in common areas, broken stove, broken bedroom door, large hole in the bedroom wall, damages to the paint in the bedroom, and smoking in the bedroom.
5. Subsection 89(1) says:

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.

6. This wording means that a landlord must establish that it is more likely than not that the tenant, an occupant or a guest, wilfully or negligently caused each item of property damage claimed.
7. The language of section 89 requires damage to be undue. It is recognized that some damage will occur over the regular course of time, due to regular wear and tear in a residential complex. Reasonable wear and tear would not normally constitute "undue damage" (*Kamoo v. Brampton Caledon Housing Corp.* 2005 O.J. No. 3911).

Common Area Damages

8. On a balance of probabilities, I do not find that the Tenant wilfully or negligently caused damage to the stove or the damages in the common area.
9. The Landlord's agent testified that on October 9, 2020, it was discovered that the glass stovetop was smashed. The agent requested an admission from the four tenants as to who damaged the stove, but no one admitted to causing the damage. Submitted into evidence was a photograph of the stove, showing the glass shattered and a large hole in the stovetop.
10. Regarding the common area damages, the Landlord's agent testified that after a unit inspection, it was discovered there were multiple areas of wall damage in the living room and hall, the couch was stained, excessive deep cleaning from smoking in the unit was required, the legs of the common room furniture was removed, nail polish on the bathroom wall, missing toilet paper holder, and a missing strip joining the carpet to wood floor. Submitted into evidence were photographs of the damages in the common areas. The Landlord's agent testified that she did not know for certain who damaged the stove or the common areas.

11. The Landlord submitted that the four tenants are jointly responsible for any damage in the common areas as per the lease agreement. Submitted into evidence was a copy of the lease agreement that states that a tenant must repair or pay for any undue damage to the rental unit or property caused by the wilful or negligent conduct of the tenant or guest or occupant. Part J of the lease agreement states that the tenant is responsible for any damage to the rental unit caused by the tenant, tenant's guest, or another person who lives in the unit. I do not find that either section of the lease agreement establishes that the tenants are jointly responsible for damages.
12. Section 89 of the Act requires the Landlord to prove, on a balance of probabilities, that 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. The Landlord's agent's own evidence was that she was uncertain if this Tenant, his occupant or guest caused the damage. As such, I cannot find that the Tenant wilfully or negligently caused the damages in the common areas. This portion of the Landlord's application is dismissed.

Bedroom Damages

13. On a balance of probabilities, I find that the Tenant wilfully or negligently caused damage to the bedframe and was smoking in the unit.
14. Regarding the bedframe, submitted into evidence were photographs of the damaged bedframe. The Landlord's agent testified that the Tenant stuck LED light strips to the bedframe. Once removed, the LED light strips took off pieces of the bedframe. On a balance of probabilities, I find that the Tenant caused damage as it is undisputed that the damage occurred in his unit. Further, I find that this damage could not be a result of reasonable wear and tear, as the damage is so substantial that it could not have occurred over the regular course in time.
15. Regarding the smoking in the unit, the Landlord's agent testified that the smell of smoke in the Tenant's bedroom was such that deep cleaning is required to remove the smell. Submitted into evidence were photographs of smoking paraphernalia in the bedroom. Based on the photographs and the Landlord's agent's testimony, I find that the Tenant was smoking in the bedroom and the smoking requires deep cleaning to remove the smell.
16. The Landlord submitted that \$550.00 is the estimated cost to replace the bedframe and deep clean the unit to remove the smoke smell. Given the nature of the damage, I find that this a reasonable cost of repair/replacement.

It is ordered that:

1. The Tenant shall pay to the Landlord \$550.00, which represents the reasonable costs of repairing the damage and/or replacing the damaged property.
2. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.

3. If the Tenant does not pay the Landlord the full amount owing on or before October 12, 2021, the Tenant will start to owe interest. This will be simple interest calculated from October 13, 2021 at 2.00% annually on the balance outstanding.

October 1, 2021
Date Issued



Camille Tancioco
Member, Landlord and Tenant Board

Head Office
777 Bay Street, 12th Floor
Toronto Ontario M5G2E5

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