



Order under Section 69
Residential Tenancies Act, 2006

File Number: SOL-13813-20

In the matter of: 205, 150 HUGHSON STREET S
HAMILTON ON L8N2B4

Between: Martha Bendzsel Landlord

and

Ashley Moore Tenant

Martha Bendzsel (the 'Landlord') applied for an order to terminate the tenancy and evict Ashley Moore (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.

This application was heard by video conference on June 23, 2021, beginning at 9:00 a.m..

Only the Landlord attended the hearing. As of 10:00 a.m., the Tenant was not present or represented at this hearing although properly served with a Notice of Hearing by the Board.

Determinations:

1. The Landlord seeks an order to terminating the tenancy and evicting 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.
2. On December 6, 2019 the Landlord served the Tenant with an N5 Notice with a termination date of December 27, 2019.
3. The Tenant is in possession of the rental unit.
4. The Landlord testified that the damages have occurred over the course of the 2019 and 2020. The Landlord observed the damages most recently during an inspection of the unit in August 2020. When the Landlord entered the residential premises she documented the following:
 - Damage to two large windows

- Damage to the carpet throughout the interior
 - Missing carpet under the bedroom doors
 - Missing closet doors
 - Damaged or missing baseboards
 - Bent frames in relation to the two air conditioning units
5. Additionally, the Landlord claims that the Tenant painted the living, bathroom and dining room walls, without permission, in a very dark colour.
 6. Based on the Landlord's uncontested evidence, I find that 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, and that such behaviour has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord.
 7. As regards remedy, the Landlord submitted an informal quote from a general contractor, which may be more aptly described as "guestimates", given that there is no evidence that the contractor viewed the damage in the unit. The quote was not presented on letterhead and the contractor was not identified. The Landlord was unable to provide the name of the contractor.
 8. The evidence before me demonstrated the walls were repainted. The Landlord is seeking \$1,700.00 for repainting the unit. However, the Landlord failed to substantiate a claim for undue damage resulting from repainting the unit. I am not satisfied that repainting the unit substantially interfered with the reasonable enjoyment of the Landlord or the lawful rights, privileges or interests of the Landlord. The Landlord's claim for repainting the rental unit is denied.
 9. The Landlord did not present any evidence to establish the scope of the damage and cost of repairs to the air conditioning units but claims \$900.00 to repair or replace the units. Without such evidence, the Landlord's claim is denied.
 10. I find that, on the balance of probabilities, the Landlord has incurred reasonable costs of \$2,000.00 to repair the damage and/or replace property that was damaged, specifically the replacement of the carpet and the closet doors, and for repairs to the floors.
 11. The Landlord also requested reimbursement of her legal costs, which consisted of a lawyer preparing the Landlord's application documents. The Board has the discretion to require a party to pay, as costs, any representation or preparation expenses of another party where the conduct of the party was unreasonable. The Landlord was unable to demonstrate that the Tenant's conduct was unreasonable, such that it caused undue expense and delay. The Landlord presented no evidence to establish the amount of costs being sought. The Landlord's request for costs is therefore dismissed.
 12. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated, as of December 4, 2021. The Tenant must move out of the rental unit on or before December 4, 2021.
2. The Tenant shall pay to the Landlord \$2,000.00, which represents the reasonable costs of repairing the damage and/or replacing the damaged property.
3. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
4. If the Tenant does not pay the Landlord the full amount owing on or before December 4, 2021, the Tenant will start to owe interest. This will be simple interest calculated from December 5, 2021 at 2.00% annually on the balance outstanding.
5. If the unit is not vacated on or before December 4, 2021, then starting December 5, 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 December 5, 2021.

November 23, 2021
Date Issued

Elle Venhola
Elle Venhola
Member, Landlord and Tenant Board

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 May 27, 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.