



**Order under Section 69 / 89
Residential Tenancies Act, 2006**

Citation: Soldano v Paredes, 2024 ONLTB 17564

Date: 2024-03-18

File Number: LTB-L-003131-23

In the matter of: 20 REDSTONE PATH
ETOBICOKE ON M9C1Y7

Between: Lina Soldano Landlord

And

Ivette Paredes Tenant

Lina Soldano (the 'Landlord') applied for an order to terminate the tenancy and evict Ivette Paredes (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 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.

The Landlord applied for an order requiring Ivette Paredes (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 23, 2024.

The Landlord's legal representative Elaine Paige, and the Landlord attended the hearing.

As of 11:04am, 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:

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, Tenant owes the Landlord \$579.948
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On December 14, 2022, the Landlord gave the Tenant a first N5 notice of termination deemed served on December 19, 2022 with a termination date of January 9, 2023. The notice of termination contains the following allegations:
 - Noise complaints due to Tenant running a business out of the rental unit.
 - Damage to the rental unit.
 - Loss of property claim.
 - Tenant or guest parking in other condo owner's parking spaces.
4. Section 64 of the Residential Tenancies Act, 2006, (the 'Act') states that:

A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.

Tenant running a business

5. The Landlord alleges the Tenant was running a business out of the rental unit, which is not allowed under the conditions of the tenancy agreement.

6. The Landlord led with insufficient evidence to support this claim and therefore this portion of the Landlord's application is dismissed.

Damage items

7. The Landlord claims the Tenant wilfully or negligently caused damage to the rental unit and the Landlord incurred reasonable costs of \$5,794.48 to repair the damage and replace property that was damaged and cannot be repaired.
8. The Landlord claim the Tenant, wilfully or negligently caused undue damage to the rental unit by damaging the bathroom vanity, causing a crack in the bathroom sink, removing custom drapery, and damaging the washing machine.
9. The Landlord submitted photographic evidence to the Board to support her claim for the damaged caused by the Tenant.
4. The photos show a cracked bathroom sink, broken vanity and a picture of missing curtains from the rental unit. The photos were taken during an inspection of the rental unit on August 6, 2022 and this list of issues was emailed to the Tenant in an email from the Landlord to the Tenant later in the day on August 6, 2022.
5. The Landlord submitted the email as evidence to support her claim.
6. The Landlord also submitted copies of receipts into evidence to support her claim the Landlord incurred the cost to repair and replace the damaged items claimed in the Landlord's application.

The Act and Analysis

7. Section 89 of the Act states:

Application for compensation for damage

89 (1) A landlord may apply to the Board for an order requiring a tenant or former 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,

(a) while the tenant or former tenant is or was in possession of the rental unit, the tenant or former tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant or former tenant wilfully or negligently causes or caused undue damage to the rental unit or the residential complex;

8. With the uncontested evidence before me and on a balance of probabilities I find the Landlord has met the burden of proof to support her claim the Tenant has wilfully or negligently damaged the rental unit or items in the rental unit.
9. I am satisfied with the Landlord's photographic evidence and the receipts submitted by the Landlord that the Landlord incurred costs to repair or replace the damaged items.
10. Given the above the Tenant owes the Landlord \$5,794.48.

Replacement patio furniture

11. The Landlord alleges the Tenant substantially interfered with her reasonable enjoyment and claims the Landlord was forced to dispose of patio furniture due to the actions of the Tenant. The Landlord claims she will incur \$1,500.00 in reasonable costs to replace the patio furniture as a result of the Tenant's actions.
12. The uncontested evidence and submissions before me are that the Tenant remove patio furniture from the property of the rental unit and put the furniture in a common area in the condominium complex. This is contravention of the condo by-laws.
13. The patio furniture was part of the leased property in the tenancy agreement.
14. The Landlord submitted the tenancy agreement into evidence to support her position the patio furniture was part of the leased property.
15. On page 4 of 5, the patio furniture is listed as inclusive of the rental unit.
16. The Landlord's submitted a copy of an email from the Tenant to the Landlord on August 14, 2022 where the Tenant informs the Landlord she has moved the patio furniture from the deck to the common area.
17. The Landlord responds on August 15, 2022 informing the Tenant the patio furniture is part of the lease and if the Tenant does not want to use it, the Landlord will "deal with it".
18. On August 16, 2022 the Landlord sent an email to the Tenant identifying issues with the rental unit, as claimed in the damages above. The email does not mention the Landlord's patio furniture or make reference to it's whereabouts.
19. The Landlord testified she was forced by the condo corp to immediately remove her patio furniture from the condo board common area or face penalty. The Landlord testified that she was unable to make arrangements to have the patio furniture stored somewhere on short notice and testified she paid the condo board grounds crew to take the furniture to a neighbours in order to avoid penalty from the condo board.

The Act and analysis

20. Section 16 of the Act states:

Minimize losses

16 When a landlord or a tenant becomes liable to pay any amount as a result of a breach of a tenancy agreement, the person entitled to claim the amount has a duty to take reasonable steps to minimize the person's losses.

21. In my view the Landlord led insufficient evidence to support her claim she was forced to dispose of the patio furniture and is entitled to the replacement value.
22. The Landlord testified she paid the grounds crew to take it to a neighbour, but in her testimony failed to provide sufficient reason why the neighbour simply couldn't store it for her for a short while until she could make alternative arrangements.
23. The Landlord also failed to produce any evidence the condo board had placed any immediate time constraints on the Landlord to remove the patio furniture which forced her to have to dispose of the patio furniture.
24. The Landlord failed to lead with sufficient evidence she contacted anyone from the condo board to explain her circumstances and request some leniency to deal with the patio furniture as she had identified to the Tenant in the August 16, 2022, where she stated " If you do not wish to use the furniture any longer I will deal with it."
25. Given the above, in my view the Landlord did not provide sufficient evidence that she attempted to mitigate her losses in accordance with section 16 of the Act, as the onus rests with the Landlord to provide sufficient evidence to support her claim for the replacement cost of the patio furniture.
26. Based on the uncontested evidence and submissions before me I do not find the Landlord's evidence persuasive enough, relying solely on her oral testimony as evidence she was forced to dispose of the patio furniture by giving it to neighbours instead of asking them to keep it for a short time, or that no other option was available to her. The Landlord's lack of particulars and specific details regarding why she had to quickly dispose of the furniture, and in the absence of any evidence the condo board was placing time constraints on the removal of the furniture are such that I am not satisfied the Landlord has met that burden of proof.
27. For the reasons above the Landlord's request for replacement costs for the patio furniture is denied and this portion of the Landlord's application is dismissed.

Illegal parking

10. The Landlord also claims that the Tenant or her guests were parking in other condo owner's parking spaces on January 14, 2022 and July 21, 2022. The owner's of the parking spaces asked the Tenant to remove the vehicle and heated arguments resulted in both instances.
11. The Landlord's legal representative submitted the Tenant did not engage in the conduct or behaviour of parking in other owner's parking spaces in the seven-day voiding period, therefore the Tenant voided the N5 notice of termination in accordance with s.64(3) of the Residential Tenancies Act, 2006 (Act).
12. Given the above the Tenant has voided this portion of the N5 notice and therefore this portion of the Landlord's application is dismissed.
28. As of the day of the hearing the Tenant had not paid the Landlord the amount of \$5,794.48 as claimed in the N5 notice within the 7-day voiding period and the Landlord was seeking an order for termination of the tenancy and an order for the Tenant to pay the Landlord the damage.
29. The termination of a tenancy is a remedy of last resort and relief should be granted where the tenancy can be saved without overly prejudicing a landlord's interests. In this case, based on the uncontested evidence and submissions, and on a balance of probabilities, I am satisfied that the Tenant has ceased the behaviour of substantially interfering with other tenants' or the Landlord's reasonable enjoyment of the residential complex, and/or lawful rights, privileges or interests as claimed in the Landlord's N5 notice.
30. Based on the uncontested evidence and submissions before me I find the Tenant wilfully or negligently caused damage to the rental unit as outlined in the N5 notice and has not compensated the Landlord.
31. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Relief from eviction

32. The evidence before me was that the Tenant voided portions of the Landlord's N5 notice. The portion of the N5 notice for damage is outstanding as of the day of the hearing, however I find on a balance of probabilities the Tenant wilfully or negligently caused damage to the rental unit and has not compensated the Landlord for the costs she incurred, claimed in the N5 notice.
33. The Tenant did not attend the hearing to make submissions to the Board for consideration for a delay or denial of eviction, therefore in the absence of any submissions from the Tenant, I am granting the Landlord her request for eviction.

34. 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.
35. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
36. This order contains all reasons for the determinations and order made. No further reasons will 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 March 29, 2024.
2. If the unit is not vacated on or before March 29, 2024, then starting March 30, 2024, 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 March 30, 2024.
4. The Tenant shall pay to the Landlord \$5,794.48, which represents the reasonable costs of repairing the damage and replacing the damaged property.
5. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
6. If the Tenant does not pay the Landlord the full amount owing on or before March 29, 2024, the Tenant will start to owe interest. This will be simple interest calculated from March 30, 2024 at 7.00% annually on the balance outstanding.

March 18, 2024

Date Issued

Greg Brocanier

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 September 30, 2024 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.