



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

Citation: Al-dajani v Mclaughlin, 2024 ONLTB 13027

Date: 2024-02-28

File Number: LTB-L-037576-23

In the matter of: 1, 27 SNOWDON AVE
SUDBURY ON P3C4N6

Between: Haytham Al-dajani Landlord

And

Raymond Mclaughlin Tenant
Sandra Leclair

Haytham Al-dajani (the 'Landlord') applied for an order to terminate the tenancy and evict Raymond Mclaughlin and Sandra Leclair (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 damage to the premises.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

The Landlord also applied for an order requiring the Tenant to pay the Landlord's reasonable outof-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 18, 2024.

The Landlord's legal representative, Carly Harris, and the Landlord attended the hearing.

As of 10:20am, 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:

Preliminary: request to amend Landlord application

1. The Landlord's legal representative submitted a request to amend the application to include additional damage claim that the Tenant willfully or negligently caused after the Landlord filed the application with the Board.
2. The original application filed with the Board on May 9, 2023 claimed damage in the amount of \$4,995.85 plus the filing fee of \$186.00.
3. The amended application was filed with the Board on January 12, 2024 and claimed damage in the total amount of \$22,284.74 plus the filing fee of \$186.00.
4. The Landlord's legal representative submitted a copy of the certificate of service to the Board, that indicated the Landlord's legal representative served a copy of the amended application to the Tenant on January 15, 2024 by email.

Service of amended application

5. Section 191 of the Act states:

How notice or document given

191 (1) A notice or document is sufficiently given to a person other than the Board,

(a) by handing it to the person;

(b) if the person is a landlord, by handing it to an employee of the landlord exercising authority in respect of the residential complex to which the notice or document relates;

(c) if the person is a tenant, subtenant or occupant, by handing it to an apparently adult person in the rental unit;

(d) by leaving it in the mail box where mail is ordinarily delivered to the person;

(e) if there is no mail box, by leaving it at the place where mail is ordinarily delivered to the person;

- (f) by sending it by mail to the last known address where the person resides or carries on business; or
- (g) by any other means allowed in the Rules

6. In accordance with the Board's Rule 3.1 a document may be served on a party by email but only "...if the person or party receiving it has consented in writing to service by email."
7. The Landlord's legal representative did not lead with any evidence to support that the Tenant gave written authorization to receive documents by email.
8. The Landlord's legal representative did not provide any evidence that despite not meeting the requirements for the methods for service of a document in section 191(1), that the Tenant came into possession of the amendment in accordance with section 191(2) of the Act that states:

When notice deemed valid

(2) A notice or document that is not given in accordance with this section shall be deemed to have been validly given if it is proven that its contents actually came to the attention of the person for whom it was intended within the required time period.

9. Given the above, I am not satisfied the Tenant was given notice of the amendment request to increase the damage claim in the Landlord's application and I find it would be prejudicial to the Tenant to grant the Landlord an amendment the Tenant was not aware of, therefore the Landlord's request to amend the application is denied.

Landlord's application

10. The Landlord's legal representative submitted the Tenant vacated the rental unit on November 11, 2023 and the Landlord is seeking damage under section 89 claimed in the original application.
11. 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, the Tenant owes the Landlord \$4,955.00 plus the filing fee of \$186.00.
12. The Landlord's N5 notice is based on claims the Tenant was flushing tampons down the toilet, which caused flooding and damage to the plumbing. The Landlord claims this started in September 2021 and the Landlord only discovered the issue in September 2022.

Landlord evidence

13. The Landlord submitted a hand-written invoice for work performed by a plumber on September 21, 2022. The invoice identifies the sewer was backed up due to “sanitary napkins” needing to be removed from the plumbing.
14. The Landlord claims he incurred \$4,955.85 in costs to repair and replace the damage items in the rental unit (labour \$2,280.00 and materials \$2,675.80) and submitted receipts to support the claim for his incurred costs.
15. I am satisfied with Landlord’s uncontested evidence he incurred total costs of \$4,955.85 to repair and replace the damage in the rental unit.
16. Based on the uncontested evidence before me, I find on a balance of probabilities the damage was caused willfully or negligently by the Tenant and therefore the Landlord’s request for costs is granted.
17. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
18. 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.
19. 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 as of November 11, 2023.
2. The Tenant shall pay to the Landlord \$4,995.85, which represents the reasonable costs of repairing the damage and 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 March 10, 2024, the Tenant will start to owe interest. This will be simple interest calculated from March 11, 2024 at 7.00% annually on the balance outstanding.

February 28, 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.