



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

Citation: Karunakaran v Millard, 2024 ONLTB 26429

Date: 2024-04-15

File Number: LTB-L-005502-24

In the matter of: 3 MOWAT CRT
WHITBY ON L1N8H2

Between: Kalpana Karunakaran Landlord

And

Charmaine G.I. Millard Tenants
Justin Millard

Kalpana Karunakaran (the 'Landlord') applied for an order to terminate the tenancy and evict Charmaine G.I. Millard and Justin Millard (the 'Tenants') because:

- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully caused undue damage to the premises.

Kalpana Karunakaran (the 'Landlord') also applied for an order requiring Charmaine G.I. Millard and Justin Millard (the 'Tenants') 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 Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex.

This application was heard by videoconference on April 4, 2024.

The Landlord, the Landlord's Legal Representative Thirusenthuran Sivapatham and the Tenant Charmaine Millard attended the hearing.

Determinations:

Preliminary Issue

1. The Landlord was made aware of the limit to the Board's monetary jurisdiction and chose to proceed with the application for damages understanding any amount above the Board's limit would be extinguished and not recoverable in any other forum.
2. The Landlord submitted evidence to the Board on the day of the hearing. It was not provided to the Tenants. The Landlord stated this evidence was in their possession since before the tenancy began. The Tenant submitted it would not be fair to allow the Landlord to rely on evidence they had not seen and that was sent to the Board only the day of the hearing.
3. I found no reasonable excuse had been provided by the Landlord for the late evidence. I also found it would be procedurally unfair to permit the Landlord to rely on evidence they had not provided to the Tenant in advance of the hearing. For these reasons, I did not permit the Landlord to rely on the evidence they submitted on the hearing date.

L2 Application

4. Both parties had a witness they intended to call to give evidence. At the outset of the hearing, the witnesses for both the Landlord and the Tenants were excluded so that they would not hear the evidence of the Landlord or the Tenant.
5. The Landlord appeared by video with their Legal Representative and their witness could be seen leaving the room and sitting in a separate area with the door closed. The Tenant appeared at the hearing by telephone. I advised the Tenant that their witness needed to be in separate room and the Tenant understood this requirement.
6. The Tenant was in possession of the rental unit on the date the application was filed.
7. On January 5, 2024, the Landlord served the Tenant an N7 notice of termination with a termination date of January 17, 2024. The notice alleges the Tenants or someone living with or visiting the Tenants has wilfully damaged the rental unit or the residential complex and that this damage was discovered by the Landlord during an inspection of the unit on December 30, 2023.
8. The N7 notice particularizes this damage as:
 - a) Cracked tiles and walls in the kitchen
 - b) Cracked wall above the thermostat
 - c) Broken ceiling in the dining room
 - d) Cracked bedroom door
 - e) Cracked wall in the hallway
 - f) Clogged sink with unwashed dishes
 - g) Broken strike jamb of the main door
 - h) Clogged sink in the powder room
 - i) Broken strike jamb and broken door for one of the rooms
 - j) Clogged toilet and broken faucet in bathroom
 - k) Cracked wall in living room

I) Broken kitchen cabinet

9. Section 63(1)(a) of the Residential Tenancies Act, 2006 (the Act) reads as follows:

Despite section 62, a landlord may give a tenant notice of termination of the tenancy that provides a termination date not earlier than the 10th day after the notice is given if the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex,

(a) wilfully causes undue damage to the rental unit or the residential complex; or

10. The Landlord testified that on December 30, 2023 she conducted an inspection of the rental unit and discovered significant damage within the home. The damage she described included cracked tiles on the kitchen floor, several holes in the walls throughout the unit, damage to the doors, a hole in the living room ceiling and a kitchen cabinet that had been broken.
11. The Landlord's evidence was that during this inspection she took photos of the damage she observed. These photos were included with the N7 notice and submitted into evidence. The photographs show the damage the Landlord testified she discovered during the December 30, 2023 inspection.
12. The Landlord testified that prior to the tenancy beginning, the rental unit had been freshly renovated and that none of the damage existed when the Tenants moved in. The Tenant did not dispute this evidence.
13. The Tenant acknowledged the holes in the walls and stated they were caused by a guest that was at the rental unit. Her evidence was the guest grew angry and caused the damage to the walls and a door.
14. The Tenant testified the damage to the kitchen cabinet was because of normal wear and tear. Her evidence was the cabinets are poorly constructed and the inner panel of one of the cabinets simply fell out because the nails holding it together failed. I found this evidence inconsistent with the photo of the damaged cabinet. The photo clearly shows the inner panel of the cabinet broken away with shards of it remaining in place. In my view, this damage was most likely caused by significant force being applied to the cabinet causing the inner panel to splinter.
15. The Tenant testified the hole in the ceiling was caused by a plumbing leak and a portion of the ceiling had to be removed. The Tenant submitted no evidence she ever reported this leak to the Landlord. The hole in the ceiling is a large square shaped area that I would approximate to be at least 30 centimeters wide and 30 centimeters long.

16. The Tenant's evidence was the cracked tile in the kitchen flooring was caused by normal wear and tear and she did not know how it occurred.
17. During cross examination of the Tenant, whispering between herself and some other person could be heard. I asked the Tenant who she was communicating with and she stated it was her witness. I reminded the Tenant her witness was excluded from the hearing until they were required and that I had told her at the outset this person had to be in a different room. The Tenant assured me her witness was now out of the room. A short time later, while the Tenant was still being cross examined, I heard more whispering and I asked the Tenant who she was communicating with. The Tenant again stated it was her witness.
18. Since the Tenant continued to rely on her witness to answer questions during cross examination even after it was made clear to her this conduct was improper, I gave the Tenant's evidence little weight. I could not determine which portions of the Tenant's evidence were her own, her witnesses' or a combination of both.
19. Based on the evidence presented, I am satisfied on a balance of probabilities the Tenants or a guest of the Tenants willfully caused significant damage to the rental unit. I say this because, the holes in the walls are numerous. The Tenant admitted a guest caused this damage while in a state of anger. The photo of the door submitted shows it is almost completely destroyed. The Tenant admitted her son removed the large portion of the ceiling in the living room. The damage to the kitchen cabinet was, in my view, caused by significant force being applied to it. The inner panel is almost entirely broken out with jagged pieces remaining where the panel was. I do not find this damage is consistent with the Tenant's evidence that the inner panel of the cabinet simply fell out because the nails holding it together had failed.
20. For these reasons, I find the Landlord has proven this damage caused to the rental unit was done willfully and not as a result of an accident or negligence.
21. The Landlord testified that after the N7 notice was served, she attended the unit on January 27, 2024 and discovered additional damage within the rental unit. Her evidence was the unit was in worse condition that it was during the December 30, 2023 inspection. She noted new damage to the washrooms and a significant amount of clutter in the unit.
22. The Tenant testified that no additional damage had been done to the unit after the N7 notice was served. She also testified she plans to repair the damage caused to the rental unit however as of the date of the hearing, repairs had not begun even though a contractor had moved into the rental unit for the purpose of conducting the repairs. The Tenant stated she is having financial difficulties and intends to borrow money from family to pay for the repairs.
23. Based on my concerns with the Tenant's evidence that I have already described, I prefer the evidence of the Landlord and find it most likely additional damage has been done to the rental unit after the N7 notice was served. Even if I am wrong, it was clear from the

evidence taken at the hearing, the condition of the rental unit has not improved since the N7 notice was served.

24. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Compensation for Damage

25. Section 89(1)(a) of the Act provides:

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; and

26. The Landlord testified she obtained an estimate on January 4, 2024 from BC Home Renovations and Flooring Plus showing the cost to repair the damage to the rental unit. This estimate accompanied the N7 notice and it was submitted into evidence. The amount of the estimate is \$63,320.68.
27. The Landlord testified she sent photos of the damage to Suthakaran Nallathamby, the contractor who renovated the rental unit prior to the tenancy beginning.
28. Mr. Nallathamby did not attend the rental unit to view the damage and he testified he relied on the photos he was provided by the Landlord and his prior knowledge of the property to prepare the estimate for the Landlord.
29. The estimate provided by Mr. Nallathamby on behalf of BC Home Renovations and Flooring Plus included \$18,000.00 for replacement of the kitchen cabinets. I noted the cabinets in the photo submitted by the Landlord appear quite dated. I asked Mr. Nallathamby why one broken cabinet door would require replacement of the entire kitchen cabinetry. Mr. Nallathamby replied that the cabinets are wood and cannot be repaired. I was not convinced by this answer and I did not find the Landlord had proven that an entire replacement of the kitchen cabinets was required. In my view, such a repair would result in betterment on the part of the Landlord. I also find it most likely a new cabinet door, made of wood, could be constructed and stained to match the colour of the existing cabinetry for far less than \$18,000.00.

30. The quotation provided also includes an amount of \$8,816.00 for removing the kitchen tile and replacing it. I asked Mr. Nallathamby why the damaged tile could not be replaced and he replied that he did not know if a matching tile could be found. He also stated he did not know how many tiles were damaged since he did not attend the unit to observe the flooring. He stated that the cost to replace 5 or 6 tiles would be approximately \$1,000.00.
31. Based on this evidence, I was not convinced the Landlord has proved on a balance of probabilities the rental unit requires an entirely new kitchen floor. I heard no evidence that convinced me a repair could not be performed or that any investigation had been done to determine if matching tiles were available.
32. The quotation also included \$6,200.00 for plumbing repairs required throughout the house. While the Landlord's evidence was the sinks in the rental unit were clogged, I was not convinced the Landlord had proven on a balance of probabilities the Tenant had done significant damage to the plumbing within the unit that required the estimated repair. In my view, an accurate estimate for a whole home plumbing repair would require an in-person assessment of the work required by a licensed plumber. Mr. Nallathamby stated he obtained this estimated amount through a third-party plumber who had not seen the rental unit and was not aware of what work needed to be done.
33. Mr. Nallathamby also testified the estimate was simply that, an estimate. He stated the amount could be different and he could not confirm the cost of repairs until the work was done.
34. Based on the evidence of the Landlord and Mr. Nallathamby, I had no confidence in any of the amounts estimated on the quotation for the repairs to the residential complex. The damage was never viewed or inspected by Mr. Nallathamby. He admitted the amounts quoted might not be accurate. No investigation had been done to determine if far less expensive repairs could be performed. I find it most likely the amounts estimated were inflated beyond what is actually required to repair the damage to the rental unit.
35. The Tenant's witness, Steve Wicks, testified he has been living in the rental unit since March 16, 2024. He stated he has done home renovations for over 20 years and has had an opportunity to inspect the damage caused to the rental unit. While he did not provide a written quotation into evidence, he estimated the damage would cost no more than \$15,000.00 to repair. He included the kitchen tiles, holes in the walls, plumbing repairs, a replacement kitchen cabinet door and the replacement of the broken doors and door jambs in the estimate he provided. The Landlord did not challenge Mr. Wicks' experience with home renovations.
36. As stated earlier, I am satisfied on a balance of probabilities the Tenants, another occupant of the rental unit or a person permitted in the residential complex by the Tenants wilfully or negligently caused undue damage to the rental unit. I am also convinced the Landlord will incur costs to repair the damage caused.
37. Ordering the Tenants to pay the Landlord an amount that is significantly higher than the actual repair or replacement costs would be unfair. This is the Landlord's application and it

is their burden to prove the amount they are requesting. While the Landlord requested an order for \$35,000.00 for repairs estimated to cost \$63,320.68, I was not convinced on a balance of probabilities they had proven the repairs would actually cost \$35,000.00. The Landlord relied on an inflated estimate provided by someone who had not determined the scope of the work required by actually inspecting and assessing the damage or investigating lower cost options.

38. While I do not find the Landlord has proven they are entitled to an order for \$35,000.00 for the damage caused to the rental unit, I am satisfied on the Tenants' own evidence that the cost to repair the rental unit will be at least \$15,000.00. This amount was provided by someone with experience in home renovations and who has actually viewed and assessed the damage in the unit. For all of these reasons, I prefer the evidence of Mr. Wicks over that of Mr. Nallathamby. Therefore, I find the Landlord will incur reasonable costs of \$15,000.00 to repair the damage or replace property that was damaged by the Tenants, their occupants or someone they permitted in the rental unit.

Section 83 Considerations

39. The Landlord sought eviction of the Tenants on an expedited basis sighting the ongoing concern that additional damage to the rental unit would occur.
40. The Tenant stated she lives in the unit with her son, her niece, the boyfriend of her niece, the contractor and the contractor's girlfriend. She stated she would need two to three months to find elsewhere to live due to her financial circumstances. The Tenant also stated she is separated from her husband and suffers from depression.
41. The Tenant denied any additional damage had been caused to the unit since the N7 notice was served. I found it unlikely the Tenant would acknowledge any additional damage based on her assertion that the kitchen cabinet had fallen out in the face of clear evidence it had been broken out. Additionally, she did not appear to take responsibility or show any remorse for the conduct of her guest, instead stating this person did not attend the unit with the intention to cause the damage that was done. For these reasons, I was not convinced the Tenant would take responsibility for new damage when she did not seem to accept responsibility for the current state of the unit.
42. While the Tenant claims she will fix the damage, nothing had been done as of the date of the hearing. She stated she will have to borrow money to pay to have the unit repaired. Since I have found the Tenant has not shown she accepts full responsibility for the damage caused, I do not find it likely she will borrow money to repair this damage. For all of these reasons, I was not convinced a conditional order is appropriate in this case.

43. 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 Tenants is terminated. The Tenants must move out of the rental unit on or before April 26, 2024.
2. If the unit is not vacated on or before April 26, 2024, then starting April 27, 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 April 27, 2024. The Sheriff is requested to expedite the enforcement of this order.
4. The Tenants shall pay to the Landlord \$15,000.00, which represents the reasonable costs of repairing the damage or replacing the damaged property.
5. The Tenants shall also pay to the Landlord \$186.00 for the cost of filing the application.
6. The total amount the Tenant owes the Landlord is \$15,186.00.
7. If the Tenants do not pay the Landlord the full amount owing on or before April 26, 2024, the Tenant will start to owe interest. This will be simple interest calculated from April 27, 2024 at 7.00% annually on the balance outstanding.

April 15, 2024

Date Issued

John Cashmore

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 October 27, 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.