



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

Citation: Szela v Monteith, 2024 ONLTB 62460

Date: 2024-09-06

File Number: LTB-L-020359-24

In the matter of: 205 RUSHBY STREET
STRATHROY ON N7G0E7

Between: Kurtis Szela
Kaitlin Gasparini Landlords

And

Ashley Grant
Robert Grant
Barbara Monteith
Paul Matthew Monteith Tenants

Kurtis Szela and Kaitlin Gasparini (the 'Landlords') applied for an order to terminate the tenancy and evict Barbara Monteith, Ashley Grant, Robert Grant and Paul Matthew Monteith (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

Kurtis Szela and Kaitlin Gasparini (the 'Landlords') applied for an order to terminate the tenancy and evict Barbara Monteith, Ashley Grant, Robert Grant and Paul Matthew Monteith (the 'Tenants') because the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully or negligently caused damage to the premises.

Kurtis Szela and Kaitlin Gasparini (the 'Landlords') also applied for an order requiring Barbara Monteith, Ashley Grant, Robert Grant and Paul Matthew Monteith (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 August 14, 2024.

The Landlords, and the Tenants Ashley Grant and Robert Grant attended the hearing.

Determinations:

L1 Application

1. An agreed statement of facts was presented at the outset of the hearing by the Dispute Resolution Officer (DRO). The parties agreed that the tenancy terminated on April 15,

2024, and the rent arrears owing to the date the Tenants vacated are \$4,500.00 after the deduction of the rent deposit being held by the Landlord.

2. The arrears in the agreed statement of facts does not accurately calculate the per diem rate up to the date the Tenant's vacated the rental unit, and does not consider the issue of interest owing on the rent deposit, nor the Landlord's application filing fee.
3. Accordingly, amount agreed to by the parties differs from the determinations made in this order having regard to all of the relevant factors to determine the amount of arrears owed by the Tenants.
4. The Tenant was in possession of the rental unit on the date the application was filed.
5. The Tenant vacated the rental unit on April 15, 2024. Rent arrears are calculated up to the date the Tenant vacated the unit.
6. The rent arrears owing to April 15, 2024 are \$7,479.45.
7. The Landlord incurred costs of \$186.00 for filing the L1 application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$3,000.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.
9. Interest on the rent deposit, in the amount of \$105.41 is owing to the Tenant for the period from November 20, 2022 to April 15, 2024.
10. The Tenants requested additional time to pay the arrears and testified that Ashley Grant is not working and Robert Grant has not worked for several months but because of the nature of Robert Grant's employment, he could be called back to work at any time. The Tenants requested an extension of time to pay to December 31, 2024.
11. The Landlord's testified that they are currently paying for their residence and the residential complex having to borrow money from lines of credit. The Landlords submitted that October or November would be an agreeable date by which the arrears should be paid.
12. The Tenants did not provide a plan to pay the arrears and the evidence before me is that neither Tenant is currently working. A delay of the date by which payment of arrears is required would be based on uncertainties and speculation. There have been no payments towards the arrears since the application was filed.
13. I do not find it appropriate to delay the date by which arrears must be paid and the Tenants shall be required to pay the arrears within 11 days of the date of this order, and if the Tenants fail to make the payment interest will accrue.

L2 Application

14. The Tenants vacated the rental unit on April 15, 2024. Accordingly, the Landlord's request for termination of the tenancy is moot. The application proceeded only on the Landlord's request for damages under s. 89 of the Act.

Compensation for Damages

15. The Tenant, another occupant of the rental unit or a person whom the Tenant permitted in the residential complex wilfully or negligently caused undue damage to the rental unit or residential complex.
16. The Tenant acknowledged liability for the following issues raised by the Landlords in their application:
1. Backyard damages (except for replacement of landscaping stones).
 2. Carpet damage on the stairs to the basement and landing.
 3. Replacement of lights above the kitchen island.
 4. Eavestrough damage.
 5. Air intake vent damage.
17. The Tenant did not disagree with the amounts claimed by the Landlords for these damages and did not suggest an amount for repair or replacement of the damages.
18. The Landlord tendered in evidence receipts for damages to the back yard specifically:
- | | |
|-----------------------------|----------|
| 1. Edging and "no-grow" mat | \$ 79.08 |
| 2. Sand for retaining wall | \$ 22.46 |
| 3. Weedman Services | \$462.80 |
| 4. Outdoor shrubbery | \$196.62 |
| 5. Black earth/dirt | \$ 39.26 |
| Total: | \$800.22 |
19. The Landlord tendered in evidence a quote for the cost to replace the carpet to the basement and the landing showing a cost of \$1,815.99.
20. The Landlord tendered in evidence an invoice for replacement of the lights above the island showing a cost of \$406.69.
21. The Landlord also tendered in evidence receipts for the cost to repair the eavestrough and air intake showing costs of \$6.76, \$14.44, and \$10.16.
22. The total amount of damages for which the Tenants acknowledge liability and do not dispute the amounts claimed by the Landlords is \$3,053.46.
23. The following damages alleged by the Landlord were disputed by the Tenants:
1. Landscaping rocks/bricks/stones
 2. Fridge door handle
 3. Floor Damage due to water leak
 4. Carpet leading upstairs, hallway, and bedrooms;

5. Damage to trim/baseboards
6. Kitchen cabinetry
7. Screen door
8. Paint costs
9. Garage floor stains
10. Basement floor concrete stains

Landscaping Rocks/Bricks

24. The Landlords testified that landscaping rocks were used in the backyard and at one time were level with a cement pad in the yard. A photograph tendered in evidence shows rocks near the fence line of the property with large gaps and patches missing revealing the ground underneath.
25. The Landlords testified that the cost to replace the landscaping rocks was \$271.20 supported by a receipt tendered in evidence.
26. The Tenant's only evidence in relation to the missing landscaping rocks was that stones may have been moved but were not removed asserting that stones "don't just disappear".
27. I do not find the Tenants explanation in relation to the landscaping rocks to be satisfactory. The Landlords clear evidence is that the rocks were missing and the Tenants' evidence is that they had two puppies who were responsible for the damages to the back yard.
28. It is not unreasonable to conclude that based on the damages acknowledged by the Tenants in the back yard to be attributable to their dogs, that the missing and displaced rocks were also as a result of the Tenant's dogs.
29. The Landlords incurred reasonable out of pocket expenses in the amount of \$271.20 to replace the landscaping rocks.

Fridge Door Handle

30. The Landlords testified that the fridge door handle was missing and that the screw attaching the handle to the fridge had been "ripped in half". The Landlords evidence is that they located the door handle in the garage and it was reattached. The Landlords tendered in evidence an invoice showing a cost of \$172.90 to reattach the fridge door handle.
31. The Tenants testified that the fridge door handle was removed by them after their daughter had tried to open the fridge and the top of the handle came off hitting her in the head. The Tenant's evidence is that she almost required stitches and when the top of the handle came off, the Tenants then removed the rest of the handle.
32. There was no evidence to corroborate the Tenant's claims in relation to the handle breaking and the Tenants did not report this issue to the Landlord. The Tenants acknowledged removing the handle of the fridge despite their justification for what prompted them to do so.

33. Accordingly, I find that the Tenants are responsible for the Landlord's reasonable out of pocket expenses to reattach the fridge handle of \$172.90.

Floor Damage

34. The Landlords testified that they were advised of a water leak in the kitchen by the Tenants on November 20, 2023. Text messages were tendered in evidence showing the communications between the Landlord and the Tenant in relation to the leak.
35. The Landlords gave evidence that they entered the rental unit on November 20, 2023 and took photographs of damage to the floor but were unable to locate an active leak from the fridge. The Landlord testified that they did notice water coming up between cracks in the floorboards that were separated.
36. The Landlords also testified that despite not seeing a leak from the fridge, the freezer was overflowing with food, including meat in the ice maker.
37. The Landlords further testified to attending at the rental unit on November 22, 2023 and the water line to the fridge was not turned off despite asking the Tenants to turn off the water line on November 20.
38. The Landlords also gave evidence that "Kitchenaid" came to inspect the fridge and found no issues with the operation of the fridge but in their opinion, overfilling the freezer and having items in the ice maker could result in the issues being experienced.
39. The Landlords entered in evidence text messages between the parties discussing the water leak and in one of the messages from the Tenant on November 21, 2023 the Tenant acknowledges removing two of the floor boards to ensure there was no moisture.
40. The Landlords also entered in evidence photographs of the floor prior to the Tenants occupying the rental unit and despite not being detailed photographs of the floor specifically, the floor appears to be in reasonable condition without gaps or shifting.
41. The Landlord tendered other photographs in evidence showing tap being used to hold the floor in place and then more photographs of the damage progressing with gaps and shifting of flooring depicted.
42. An invoice from Carpet One dated August 7, 2024 tendered in evidence by the Landlords has a note that provides:
- "Replacement of click vinyl flooring in the kitchen, pantry and living room due to water damage on the subfloor. Boards in the living room appear to have shifted as a result of plank removal in the kitchen, which damaged the integrity of the floors locking system. This has resulted in a cascading effect of joints breaking and gapping through the floor in adjacent rooms."
43. The Landlord testified that they intended to replace only the necessary portions of the damaged floor and the initial quote from Carpet One provides a cost of \$5,973.72.
44. The Landlords gave further evidence that due to the damage to the floor in the kitchen, living room, and pantry, the issues affected other areas of the floor in the rental unit.

45. The Landlords tendered in evidence a further estimate from Carpet One also dated August 7, 2024 which notes:

“Replacement of click vinyl in the bathroom, hallway and laundry room attached to the Kitchen and Living room areas. Some small gapping has begun to show on the end joints which indicates stress on the click system due to excessive movement.”

46. The second Carpet One quote shows additional flooring repairs costs of \$1,921.09.

47. The Tenant’s evidence is that the floor issues were caused by the fridge testifying that they saw water on the floor a few times and believed something had been spilled on the floor. Upon discovering that there was water under the floor, the Tenants testified that is when issues with the floor were noticed.

48. The Tenants entered in evidence pictures of the floor showing various imperfections at the time they moved into the rental unit, and a video that shows the water coming up between the floorboards in the kitchen when pressure is put on the floor.

49. The Tenants testified that they disputed that their removal of the floorboards caused damage as Robert Grant is a carpenter and the floorboards were “lifted straight out” simply to ensure there was no water underneath.

50. The Tenants also gave evidence that the Landlords chose not to immediately replace the floor asking if the floor could wait until the Tenants vacated to which the Tenants agreed. The Landlords evidence differed with the Landlords testimony that the Tenants did not want work to be completed while they were still residing in the rental unit.

51. In relation to the vinyl floor replacement in the kitchen, living room, pantry, and other areas, I find that the originating event that caused the initial damage to the floor was a water leak in the kitchen attributable to an issue with the fridge.

52. The Landlords testified that “Kitchenaid” came to inspect the fridge and found nothing operationally wrong with the fridge but that the overloading of the freezer with items being put in the ice maker caused the leak. The Tenants disputed that anyone came to inspect the fridge while they were in the rental unit.

53. The Landlords had no objective evidence to prove the freezer was overfilled or that items were being kept in the ice maker of the freezer. The Landlords also did not tender in evidence a report or invoice from the company that came to inspect the fridge to corroborate that the leak was caused by the Tenants.

54. The Landlords also did not have sufficient evidence to prove that the leak from the fridge was caused wilfully or negligently by the Tenants.

55. However, the Landlords did tender in evidence a copy of an invoice from Carpet One that has notes confirming the shifting floorboards and gaps were caused by the removal of floorboards in the kitchen and it was undisputed that the Tenants removed the floorboards.

56. The Tenants did not have any evidence to contradict the notes from Carpet One and I find that despite the Tenants not being responsible for the water leak, the removal of the floor boards caused damage, specifically shifting floorboards and gapping as noted by Carpet One.
57. I do not find that the Tenants are liable for the full amount of the Carpet One quote as the quote also cites water damage for which the Tenants are not responsible, but based on the evidence before me the Tenants are partially liable for the replacement of the floor due to removal of the floorboards and apportion the Tenants responsibility to half of the two quotes claimed by the Landlords.
58. The two Carpet One quotes total \$7,894.81 for replacement of the vinyl floor, and the Tenants are responsible for half of that amount or \$4,907.95.

Carpet Replacement

59. The Landlords testified that the carpet in the rental unit was stained and could not be cleaned necessitating replacement. The Landlords testified that carpet on both sets of stairs, the upstairs hallway, and the bedrooms was soiled and had a urine smell.
60. The Landlords tendered in evidence multiple pictures of carpets in the rental unit in different areas showing staining testifying that costs of \$180.80 were incurred to steam clean the carpets. The Landlord's further testified that the steam cleaning was unsuccessful and the carpets need to be replaced.
61. The Tenants acknowledged responsibility for issues with the carpet going downstairs and on the carpeted landing. The Landlords entered in evidence a Carpet One quote dated August 7, 2024, totaling \$1,784.32 to replace carpet on the stairs and landing.
62. The Tenants denied responsibility for damage to carpets upstairs testifying that their dogs were not allowed upstairs and there was a gate preventing the dogs from going upstairs.
63. The Landlords tendered in evidence a Carpet One quote showing a cost of \$6,497.62 to replace the carpets upstairs in the rental unit. Another Carpet One quote shows a cost of \$2,184.70 to replace stairs leading to the basement.
64. Despite acknowledging damage to the carpets on one set of stairs and the landing, the Tenants did not provide evidence or testimony in relation to the photographs of the carpets in other areas of the rental unit simply testifying that it was "normal wear and tear".
65. The photographs tendered in evidence show staining and soiling in other areas of the rental unit not acknowledged by the Tenants and I find on a balance of probabilities that the carpets in the rental unit were soiled or otherwise stained to a degree that replacement is required and this was caused willfully or negligently by the Tenants.
66. The Tenants shall pay to the Landlord the cost of steam cleaning and carpet replacement in the amount of \$10,647.44.

Trim and Baseboards

67. The Landlords also tendered in evidence three photographs of trim and baseboards testifying that this damage was caused by pets and the baseboards smelled soiled.
68. The Tenants testified that one area of trim is located by the fridge and would have been damaged by the fridge leaking. The Tenants gave evidence that they were unaware of damage to the trim and baseboards testifying that they do not know how it was caused speculating it could have been due to rain.
69. The Landlords testified that amounts being claimed for baseboard and trim replacement were included in invoices from Carpet One. As the amounts claimed for floor and carpet replacement have already been decided, the amounts ordered for any damage to trim and baseboards are included in those amounts.

Kitchen Cabinetry

70. The Landlords tendered in evidence two photographs of a panel beside the dishwasher showing some water damage and delamination of laminate veneer. The Tenants denied responsibility for this issue attributing any water damage to the leak from the fridge.
71. The Landlords did not testify as to how this damage was caused and it is not clear from the photographs that this was damage caused wilfully or negligently by the Tenants. I do not find the Tenants are responsible for replacement of the cabinetry.

Screen Door

72. The Landlords gave evidence that the sliding screen door has rips and tears evidenced by photographs of the ripped screen.
73. The Tenants testified that there was no damage to the screen door and that it had a few rips and tears already.
74. The rips and tears shown in the photographs do not appear to be normal wear and tear and there was no evidence that these damages were present when the Tenants took occupancy of the rental unit.
75. The Landlords tendered in evidence a receipt for replacing the screen of \$56.50 and I find, on a balance of probabilities that the screen door was damaged by the Tenants. The Tenants shall pay \$56.50 to replace the screen in the door.

Drywall Holes and Painting

76. The Landlords tendered in evidence photographs showing walls in the rental unit with large unpainted patches. The Landlords testified that they are not seeking labour costs, simply the cost of paint which was included in a Carpet One invoice previously tendered in evidence.
77. The Tenant's evidence is that the Landlords were told the Tenants would complete the patching and painting. The Tenants also testified that they patched and sanded any wall damage.

78. As the Tenants have acknowledged patching holes in the drywall themselves, the Landlord will need to paint the patches completed by the Tenants. I do not find it unreasonable to order the Tenants to pay the Landlords reasonable out of pocket expenses for paint.
79. The paint cost claimed by the Landlords was included in a Carpet One invoice tendered in evidence and the Tenants liability for those invoices have been decided.

Concrete Staining- Basement and Garage

80. The Landlords testified that the Tenants left stains on the cement of the garage floor and basement in the rental unit. The Landlords evidence is that despite using chemical treatments, soap, vinegar, and power washing the stains could not be removed.
81. The Landlords believe that the damage to the garage floor is a result of a BBQ grease tray dripping on to the floor. The Landlords further testified in relation to staining of the concrete in the basement of the rental unit testifying that the floor smells of animal urine and hours were spent scrubbing the floors. The Landlords also gave evidence that animal feces were found in the basement which were reflected in photographs tendered in evidence.
82. The Landlords supplied invoices for basement and garage resurfacing in the amount of \$452.00 and \$339.00.
83. The Tenants testified they did not know the cause of the damage in the garage and denied liability for the damage in the basement. Despite denying responsibility for damage in the basement, the Tenants testified that they acknowledged the staining in the basement and their "little dog" would go downstairs "once in a while".
84. The Tenants denied liability for damage to the concrete floor in the basement testifying that if the Landlords put flooring over the concrete then it would not need resurfacing.
85. I find that the Landlords have proven that the garage floor and basement floor is stained necessitating resurfacing and that this was caused negligently by the Tenants.
86. The Tenants shall pay to the Landlord \$791.00 for the cost to repair the garage and basement floor.
87. The Landlord has or will incur reasonable costs of \$19,900.45 to repair the damage and replace property that was damaged and cannot be repaired.
88. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of April 15, 2024, the date the Tenant moved out of the rental unit.

L1 Application

2. The Tenant shall pay to the Landlord \$4,560.04. This amount includes rent arrears owing up to the date the Tenant moved out of the rental unit and the cost of filing the application.

The rent deposit and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.

3. If the Tenant does not pay the Landlord the full amount owing on or before September 17, 2024, the Tenant will start to owe interest. This will be simple interest calculated from September 18, 2024 at 7.00% annually on the balance outstanding.

L2 Application

4. The Tenant shall pay to the Landlord \$19,900.45, which represents the reasonable costs of repairing the damage and replacing the damaged property.
5. If the Tenant does not pay the Landlord the full amount owing on or before September 17, 2024, the Tenant will start to owe interest. This will be simple interest calculated from September 18, 2024 at 7.00% annually on the balance outstanding.

September 6, 2024
Date Issued

Kyle McGraw
Member, Landlord and Tenant Board

15 Grosvenor St, 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.

**Schedule 1
SUMMARY OF CALCULATIONS**

A. Amount the Tenant must pay as the tenancy is terminated

Rent Owing To Move Out Date	\$7,479.45
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$3,000.00
Less the amount of the interest on the last month's rent deposit	- \$105.41
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$4,560.04

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