



Order under Section 69 / 89 Residential Tenancies Act, 2006

Citation: Lau v Mordchaev, 2024 ONLTB 60703

Date: 2024-08-21

File Number: LTB-L-068436-23

In the matter of: 829, 31 TIPPETT RD
NORTH YORK ON M3H0C8

Between: Anita Lau Landlord

And

Eden Mordchaev Tenant

Anita Lau (the 'Landlord') applied for an order to terminate the tenancy and evict Eden Mordchaev (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 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 May 6, 2024.

The Landlord's Representative Hoi Fai Alvin Chan and the Tenant attended the hearing.

It is determined that:

1. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy or the claim for compensation in the application. Therefore, the application is dismissed.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On August 16, 2023, the Landlord gave the Tenant an N5 notice of termination ('N5 Notice'). The notice of termination alleges that the Tenant wilfully or negligently caused a flood in the rental unit which resulted in significant damage.
4. The Tenant did not repair the damage, pay the Landlord the reasonable costs to repair the damage or make arrangements satisfactory to the Landlord within seven days after receiving the N5 notice of termination. Therefore, the Tenant did not void the N5 notice of termination in accordance with section 62(3) of the *Residential Tenancies Act, 2006* (Act).

Landlord's Evidence

5. The Landlord's Representative Hoi Fai Alvin Chan ('HC') presented the evidence. I gave HC an opportunity to call the Landlord as a witness, but he declined.
6. HC stated that a flood occurred in the rental unit on June 24, 2023, and that the Tenant notified the Landlord of the incident. According to HC, insurance adjusters believe the flood was caused by the Tenant's negligence. HC presented a letter from the insurance company, which states, "An inspection has been completed, and we verified that there was a backup from a toilet in your unit causing damage to flooring and drywall."
7. HC also presented an undated letter, submitted as a Word document, from a plumber offering his opinion. The letter is addressed to a Hansel Cheung, who is neither the Landlord nor the Landlord's Representative. The letter states:

Hope all is well. Regarding the incident we spoke about this morning. It sounds like the toilet was plugged and the flapper (inside the toilet tank) didn't seal properly. If something like this occurs the water will continuously run and overflow, which might explain why the water was clear. Eventually the blockage may clear on its own and make it difficult to determine what caused the flood.

8. HC argued that the Tenant behaved negligently by failing to notify the Landlord that the water in the toilet was running continuously.
9. HC presented an invoice from a water restoration company totalling \$34,533.13. According to HC, the Landlord's insurance policy covered \$10,000.00 of those expenses, leaving a balance of \$24,533.13.

Tenant's Evidence

10. The Tenant did not dispute that a flood occurred in the rental unit but asserted that it was not his fault. He explained that he left the unit to get a haircut nearby, and everything was fine when he departed. He later received a call from the property management, and upon returning, found the unit flooded. No one could initially identify the source of the water. The Tenant testified that he turned off the accessible water lines, made his best efforts to clean up the water, and immediately notified the Landlord.
11. The Tenant attributed the flood to poor plumbing, claiming it was a systemic issue in the residential complex. He testified that the property manager informed him that approximately 15 other units in the building had also experienced floods. To support his claim, the Tenant presented videos of other plumbing incidents in the residential complex and general emails from the condominium corporation confirming multiple plumbing issues in 2023 and outlining a plan to address them.
12. The Tenant also presented a recording of a telephone conversation with the property manager, Rei Sulai ('RS'), in which RS explained that the Tenant's plumbing is on an auxiliary line closely connected to the main drainage stack for the entire building. According to RS, when the main drainage is blocked, it backs up to the 8th floor, potentially causing flooding.

Analysis

1. I prefer the Tenant's direct testimony over the hearsay evidence of the Landlord's Representative. Neither the Landlord nor the Landlord's plumber attended the hearing to testify. In contrast, the Tenant was present, remained consistent even under cross-examination, and supported his testimony with documentary and video evidence.
2. HC argued that the letter from the Landlord's insurance company proves the Tenant's negligence. However, the letter from Octagon Insurance Services does not assign fault; it only states that the damage was caused by a backed-up toilet. I give little weight to the second letter from the plumber as it is undated, in an editable format, and addressed to an unknown individual. Additionally, the letter appears to be based on information provided over the phone, not an in-person inspection of the rental unit.
3. I make no determination regarding other plumbing issues in the building. I accept the Tenant's testimony that he did not cause the flood and made all reasonable efforts to mitigate damage to the rental unit.
4. I am satisfied that there was a flood in the rental unit and that the Landlord incurred costs to repair the damage. However, the Landlord has not proven, on a balance of probabilities, that the Tenant, another occupant of the rental unit or a person whom the Tenant permitted in the residential complex caused the damage. Therefore, the application must be dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

August 21, 2024

Date Issued

Kate Sinipostolova

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.