



Order under Section 69 / 89 Residential Tenancies Act, 2006

Citation: Spadina Towers Inc. v Rodriguez, 2024 ONLTB 60767

Date: 2024-08-22

File Number: LTB-L-067717-23

In the matter of: 2504, 666 SPADINA AVE
TORONTO ON M5S2H8

Between: Spadina Towers Inc.

Landlord

And

Publio Rodriguez
Julia Rodriguez

Tenant

Spadina Towers Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Publio Rodriguez and Julia Rodriguez (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 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 Legal Representative David Ciobotaru, the Landlord's Agent Elona Anastasi, the Landlord's Witnesses Patrick Jain and Yassine Khalid, the Tenant Julia Rodriguez, and the Tenant's Support Person Maru Rodriguez attended the hearing.

When the capitalized word "Landlord" is used in this order, it refers to all persons or companies identified as a Landlord at the top of the order. When the capitalized word "Tenant" is used in this order, it refers to all persons identified as a Tenant at the top of the order.

It is determined that:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy but not the claim for compensation in the application. Therefore, the application is granted but the claim for compensation 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 served the Tenant with an N5 notice of termination ('N5 Notice'). The notice alleges that on December 24, 2022, the Tenant's relatives were jumping in the elevator, causing it to stop. The Tenant then called the fire department to open the elevator and allow them to exit. The Landlord incurred costs due to this non-emergency visit, which the Landlord claims as damages.
4. The parties agreed that the incident occurred only once and that no further incidents took place within seven days after the N5 Notice was served or after the application was filed. Therefore, the Tenant voided the portion of the N5 Notice related to substantial interference with reasonable enjoyment, in accordance with section 64(3) of the *Residential Tenancies Act, 2006 (Act)*.
5. 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 Act.

Undue Damage

6. It is undisputed that the Tenant's relatives were in the elevator of the residential complex when it became stuck and that, after some time, the Tenant called emergency services to assist her family members. It is also undisputed that two fire trucks responded, resulting in charges incurred by the Landlord.
7. The parties disagreed on the cause of the elevator getting stuck. The Landlord argued that the Tenant's family members were jumping in the elevator, triggering an automatic safety response that caused it to stop, while the Tenant maintained that the elevator stopped on its own.
8. The Landlord's superintendent, Yassine Khalid ('YK'), and property manager, Patrick Jain ('PJ'), testified that in their years of employment with the Landlord, the elevator has never stopped on its own. They stated that elevator technicians perform monthly maintenance on the first day of each month, and the elevator only stops due to passenger behavior.
9. YK testified that the elevator is equipped with a safety system that stops the elevator if the sensor detects a fall. According to YK, this safety system can be triggered by passengers jumping, as it creates small "falls" when they land.
10. The Landlord's Agent, Elona Anastasi ('EA'), presented a report from the elevator technician who serviced the elevator in response to the incident. The report states that the reason for the visit was "4 people stuck on 16th floor" and that the work performed was "Fire department leaving as I pulled up. Found tripped overspeed switch. Reset and

monitored operations. Left running.” The report did not indicate any charge for resetting the elevator.

11. YK also presented a security video showing the inside of the elevator. The video depicts four adults and a young child inside the elevator. The child and a woman began jumping, and after about 7 seconds of continued jumping, the elevator stopped.
12. The Tenant identified the individuals in the video as her family members who were on their way to visit her but disputed that they were jumping, arguing that they were only “bouncing.” She also testified that her family members pressed the emergency button in the elevator, but it did not work.
13. The distinction between whether the Tenant’s relatives were “jumping” or “bouncing” does not change the outcome. Based on the video and service report presented by the Landlord, I find that the woman and child exerted continuous downward force on the elevator which caused the sensor to register a “fall”, triggering the safety stop.
14. On a balance of probabilities, I find that the elevator was in good condition and stopped due to the actions of the Tenant’s relatives. I further find that causing the elevator car to stop resulted in undue damage, exceeding what would be expected from normal wear and tear. Therefore, the Tenant’s relatives caused undue damage to the elevator by triggering its safety mechanism.

Compensation

15. For the following reasons, I find that the charges claimed by the Landlord are not costs necessary to repair or replace damaged property.
16. The Landlord claimed \$1,019.78 in damages, which represents charges from the City of Toronto fire department for two fire trucks responding to a non-emergency elevator incident.
17. Black’s Law Dictionary, 6th edition, defines “damage” as: loss, injury or deterioration caused by negligence, design or accident of one person to another in respect of the latter’s person or property.
18. Additionally, section 89(1)(a) of the Act provides that:

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, 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.

19. Through use of terms such as “repair”, “replacement” and “damaged property”, it is clear this section contemplates monetary remedies where a respondent is responsible for physical loss, injury or deterioration to an applicant’s personal or real property. This section does not allow an applicant to successfully claim on other costs.

20. In my view, the fire department charges claimed by the Landlord do not meet the definition of “damage” as contemplated by section 89 of the Act.
21. Although the elevator technician’s reset may be considered a “repair”, it was not claimed on the N5 Notice or L2 application, and the Landlord did not present evidence of a charge associated with this service.
22. The Landlord has proven that the Tenant, an occupant of the rental unit, or a person whom the Tenant permitted into the residential complex caused negligent damage to the residential complex. However, the Landlord has not proven that or that the Landlord incurred reasonable costs to repair or replace damaged property. Therefore, the claim for reimbursement of the fire department charges is dismissed.
23. The Landlord’s Representative requested a conditional order requiring repayment of the fire department charges. This claim is dismissed; however, I find it appropriate to order the Tenant not to damage the elevator in future pursuant to subsection 83(1)(a) and 204(1) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues on the conditions outlined below.
2. From August 22, 2024, to August 21, 2025, the Tenant shall not cause, nor permit other occupants or guests to cause, undue damage to the residential complex by jumping or bouncing in the elevator, thereby triggering the safety stop.
3. If the Tenant fails to comply with the conditions set out in paragraph 2 of this order, the Landlord may apply under section 78 of the Residential Tenancies Act, 2006 (the ‘Act’) for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.
4. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application on or before September 30, 2024.
5. If the Tenant fails to pay the Landlord the filing fee on or before September 30, 2024, the Tenant will start to owe interest. This will be simple interest calculated from October 1, 2024, at 7.00% annually on the balance outstanding.

August 22, 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.