Order under Section 79 / 88.1 / 88.2 / 89
Residential Tenancies Act, 2006

Citation: Faulkner v Chretien, 2024 ONLTB 60794
Date: 2024-08-21
File Number: LTB-L-080105-23

In the matter of: 2654b MONCTON RD
OTTAWA ON K2B7W1

Between: Kim Faulkner — Landlord
Andrew Faulkner

And

Kyle Chretien — Tenant
Alicia Hedervary-Konth
Charles Hedervary-Konth
Lilli Chretien
Julian Dimuzio

Kim Faulkner and Andrew Faulkner (the 'Landlord') applied for an order to terminate the tenancy and evict Kyle Chretien, Alicia Hedervary-Konth, Charles Hedervary-Konth, Lilli Chretien and Julian Dimuzio (the 'Tenant') because:

- the Landlord believes that the Tenant abandoned the unit.

The Landlord also applied for an order requiring Kyle Chretien, Alicia Hedervary-konth, Charles Hedervary-konth, Lilli Chretien and Julian Dimuzio (the 'Tenant') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

The Landlord also applied for an order requiring Kyle Chretien, Alicia Hedervary-konth, Charles Hedervary-konth, Lilli Chretien and Julian Dimuzio (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.

The Landlord also applied for an order requiring Kyle Chretien, Alicia Hedervary-konth, Charles Hedervary-konth, Lilli Chretien and Julian Dimuzio (the 'Tenant') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's conduct or that of another occupant of the rental unit or someone the Tenant permitted in the residential complex. This conduct substantially interfered with the Landlord's reasonable enjoyment of the residential complex or another lawful right, privilege or interest.

This application was heard by videoconference on August 8, 2024.

Only the Landlord attended the hearing.

As of 9:29 a.m. 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.

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 and the claim for compensation in the application. Therefore, the application is dismissed.

   Abandoned Unit/ Termination of the Tenancy

2. The Landlord's application asks that the Board determine that the Tenant has abandoned the rental unit and issue an order terminating the tenancy on that basis.
3. The Board's Interpretation Guideline 4 entitled Abandonment of a Rental Unit explains the concept of abandonment as follows:

   > Abandonment is a unilateral act by the tenant to relinquish their tenancy and give up possession of the rental unit without properly giving notice of the termination to the landlord. If the landlord is not sure whether or not a rental unit has been abandoned, they may file an application for determination of this issue with the Board; however, it should be noted the Board has no jurisdiction to issue an order for rent or compensation if a tenant is no longer in possession of the rental unit (see section 87). In this case, the landlord may seek a remedy by applying to Court.

4. Section 2(3) of the RTA provides that a rental unit is not considered abandoned where the tenant is not in arrears of rent. Even if there is evidence of abandonment, such as the furniture being removed, the landlord cannot treat the unit as abandoned before the end of the rental period if the rent is fully paid.

5. In this case, the Landlord testified that the Tenant abandoned the rental unit and did not give proper notice to the Landlord. At the hearing the Landlord read emails she received from the Tenant. The Landlord testified that on August 26, 2023, the Tenant emailed the Landlord that they wanted to terminate the tenancy and they were giving the Landlord 30 days notice. It was noted at the hearing that the notice was not 30 days but 20 days. The Landlord testified that she replied "Ok, I will accept this as your month's notice and will come and collect the keys on or before September 15th, 2023. We can make arrangements closer to the date." The Landlord submitted that she attended the unit on September 15, 2023, and the door was unlocked, and the keys were on the kitchen counter. The Landlord submits that she has no idea when the Tenant's vacated. On September 15, 2023, the Landlord texted the Tenant and said "Hey, Im at the house to get the keys" and the Tenant replied that "the keys are on the kitchen counter".

6. The Landlord testified that the parties came to an agreement on a date to terminate the tenancy, being September 15, 2023, she attended at the rental unit on September 15, 2023 and the Tenant had removed all of their belongings and had provided the keys to the rental unit. The Landlord confirmed with the Tenant that they had returned vacant possession of the unit to the Landlord.

7. Pursuant to section 37 of the Residential Tenancies Act, 2006 ('the Act') a tenancy may be terminated where the parties agree to terminate and the tenant vacated the unit in accordance with the agreement. Vacating includes removing one's belongings and returning possession of the rental unit. In this case, the Landlord testified that the Tenant removed their belongings and left the keys on the kitchen counter. If that is what happened, then the Tenant vacated the unit and the tenancy terminated pursuant to section 37.

8. I therefore find on the uncontested evidence before me, on a balance of probabilities, that the parties agreed to terminate the tenancy as of September 15, 2023 and the Tenant vacated the unit returning vacant possession to the Landlord by that date. The tenancy therefore terminated on September 15, 2023, in accordance with the parties' agreement. As there was an agreement to terminate the tenancy, I find that the rental unit was not "abandoned" as defined by the Act.

Compensation for unpaid utilities

9. The Landlord checked off the box on the L2 application that the Tenant failed to pay heat, electricity and/or water costs that they were required to pay under the terms of the tenancy agreement. It was also noted that the amount being claimed was zero. At the hearing the Landlord presented no evidence relating to their claim of unpaid utilities. As no costs were claimed and the Landlord provided no submissions on the claim the claim for unpaid utilities is dismissed.

Compensation for damages

10. The Landlord has not proven that 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.

11. Section 89 of the Act allows a landlord to apply to the Board for an order requiring a 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 the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex wilfully or negligently causes undue damage to the rental unit or the residential complex and the tenant is in possession of the rental unit.

12. This section requires the Landlord to prove, on a balance of probabilities, that the damage in question is "undue". Although this term is not specifically defined in the Act, I think it is fair to say that "undue" refers to damage that is beyond what is reasonably expected normal wear and tear. Undue damage is therefore physical damage to a unit that is reasonably considered excessive or unnecessary.

13. The Landlord testified that the Tenant damaged the rental unit and the Landlord has incurred reasonable cost as a result of the damage. At the hearing the Landlord requested to amend her application from $15,000.00 to $5,539.84 to include two estimates for painting the rental unit in the amount of $4,000.00 and $600.00 and an estimate to replace the flooring in the rental unit for the amount of $939.84. The Landlord did not submit any photos to show the undue damage of the rental unit.
14. In addition to proving that the damage was "undue", section 89 of the Act also requires the Landlord to prove on a balance of probabilities that the damage was caused by the Tenant, an occupant (roommate) or guest. Since this section talks about a tenant's liability for damage, it necessarily requires that the damage being claimed was done at the time the Tenant was a tenant of the rental unit. However, the Landlord was unable to prove when the damage took place and whether the claimed damage had occurred prior to the Tenant moving into the rental unit.
15. Accordingly, I am not satisfied on a balance of probabilities that the alleged damage to the unit was caused by the Tenant and could have happened before the Tenant moved in. Therefore, the Tenant cannot be held liable for damages under section 89 of the Act and this part of the L2 Application is dismissed.

Compensation for substantial interference

16. The Landlord has not proven that the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex substantially interfered with the reasonable enjoyment of the residential complex by the Landlord or another lawful right, privilege or interest of the Landlord.
17. As part of the application, the Landlord is claiming $800.00 for out-of-pocket expenses she incurred as a result of the Tenant's conduct.
18. The Landlord testified that at the beginning of the tenancy the parties signed a lease agreement. In the lease agreement the Tenant agreed to pay for items that were in the unit available for purchase. When the Tenant's vacated the rental unit they took with them an assortment of items that were not paid for by the Tenant. During the hearing I requested a copy of the lease agreement to show the terms that the parties had agreed to. The Landlord only submitted the first and last page of the tenancy agreement and said the Tenants did not send the other pages so she did not have the list of items that were in the unit.
19. Given the reasons above, I find that the Landlord didn't prove on a balance of probabilities that the Tenant conduct substantially interfered with the reasonable enjoyment of the premises by the Landlord, resulting in out-of-pocket expenses to the Landlord. The Landlord brought no witnesses to attest to conduct of the Tenant and had no direct evidence regarding the Tenants behaviour. It is the Landlord's obligation to prove on a balance of probabilities that the conduct rises to the level of substantial interference and after consideration of all of the evidence, I must dismiss this part of the Landlord's application as they failed ot meet the burden of proof.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of September 15, 2023, the date the Tenant vacated the rental unit.
2. The Landlord's application is dismissed.

August 21, 2024
Date Issued

Teresa Hunt
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.