



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

Citation: Toronto Community Housing Corporation v Ivan, 2024 ONLTB 22772

Date: 2024-03-26

File Number: LTB-L-044913-23

In the matter of: 707, 4175 LAWRENCE AVE E
SCARBOROUGH ON M1E4T7

Between: Toronto Community Housing Corporation Landlord

And

Roland Ivan Tenant

2024 ONLTB 22772 (CanLII)

Toronto Community Housing Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Roland Ivan (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 Tenant or another occupant of the rental unit has committed an illegal act or has carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential complex;
- the Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

Toronto Community Housing Corporation (the 'Landlord') also applied for an order requiring Roland Ivan (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 March 20, 2024.

The Landlord's Legal Representative, Laura MacPhee and a witness for the Landlord, Jamie McMurray attended the hearing.

As of 10:01 am 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.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The Tenant does not owe any arrears of rent and the rent is up to date for the period ending March 31, 2024.
4. The lawful monthly rent is \$139.00 per month and is due on the first day of the month.
5. The Landlord is not holding a Last Month Rent Deposit.
6. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

N5 Notice of Termination

7. On April 12, 2023, the Landlord gave the Tenant an N5 notice of termination by Xpress Post deemed served on April 17, 2023. The notice of termination contains the allegation that the Tenant has substantially interfered with the reasonable enjoyment of lawful right, privilege or interest of the Landlord.
8. The notice of termination contains the allegations that the Tenant has cigarette butts strewn all over the floor of the rental unit. There was a fire inside the rental unit, and it was determined by Toronto Fire Service that the cause for the fire was directly related to the careless extinguishing of the smoking material inside the rental unit.
9. The Tenant did not void the notice within 7 days after receiving the N5 notice of termination by repairing replacing or paying the Landlord the amount of \$26,145.01, which is the amount the Landlord estimated it would cost to repair the damaged property.

N6 Notice of Termination

10. On April 12, 2023, the Landlord gave the Tenant an N6 notice of termination by Xpress Post deemed served on April 17, 2023. The notice of termination contains the allegation that the Tenant has committed an illegal act.
11. The Tenant has committed an illegal act in the rental unit by removing the smoke alarm from the ceiling and placing it in a closet.

N7 Notice of Termination

12. On April 12, 2023, the Landlord gave the Tenant an N7 notice of termination by Xpress Post, deemed served on April 17, 2023. The notice of termination contains the allegation that the Tenant has seriously impaired the safety of another person and this behaviour occurred in the residential complex.

13. The Tenant has seriously impaired the safety of other tenants by removing the smoke alarm in the rental unit.

Compensation for Damages

14. 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.
15. Under section 89 of the Act, a Landlord may apply to the Board for an order requiring a tenant to pay the reasonable costs that the Landlord has incurred or will incur for the repair of or, where repairing is not reasonable, the replacement of the 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 residential complex and the tenant is in possession of the rental unit.
16. I am persuaded by the testimony and evidence of the Landlord's witness that the Tenant wilfully or negligently caused damage to the rental unit by not properly extinguishing his cigarette which resulted in a fire inside the rental unit, which caused a significant amount of fire damage, heat, and smoke damage through the rental unit.
17. When adding up the Landlord's invoices the total damage amount, I calculate is \$27,767.27, however, I will only be considering the amount the Landlord has claimed on the application being \$26,145.01.
18. The Landlord has incurred reasonable costs of \$26,145.01 to repair and replace the damage. I am granting the Landlord's request for an order requiring the Tenant to pay the Landlord \$26,145.01 to repair the damage caused by the Tenant. The Landlord has provided paid invoices for the repair and restoration of the rental unit, and I am satisfied that this represents a reasonable cost.

Landlord's Uncontested Evidence

19. The Landlord's witness, Jamie McMurray testified that he is a Program Supervisor with Risk Management for Toronto Community Housing and manages claims relating to accessing damage due to floods, fires or vehicle impacts. His job responsibilities include accessing the damages and work with vendors to mediate the issue.
20. He testified that on July 17, 2021, there was a fire inside the Tenant's rental unit, and he sent their Fire Investigator to determine the cause of the fire and a report was provided to him, and then he proceeded with the repairs of the rental unit.
21. The Landlord provided a copy of the Fire Investigation Report dated June 17, 2021. Jamie McMurray testified that he is familiar with this document, and it was prepared by a third-party fire investigation company Risk Solutions and the report is a synopsis of the event of the fire.

22. The synopsis in the report included the following information:

On Thursday June 17, 2021, a fire occurred in the living room of 4175 Lawrence Avenue East, Apartment 707. The tenant was not home at the time of the fire. However, a friend stated he was at his apartment for approximately 10 minutes around the time of the fire. Our investigation was initiated on June 17, 2021 at 2209 hours. Toronto Fire Services did not send a Fire Investigator. The area has been overhauled at the time of the investigation.

23. He testified that the synopsis references that the area had been overhauled, that meant that when their Fire Investigator entered the rental unit, Toronto Fire had done what they needed to do to suppress the fire and may have moved items around in the rental unit.

24. The report showed a photograph of the residential complex with a description that the complex is a 13-storey apartment building, and a fire department connection is located on the ground level at the east side of the building.

25. The report references the building is protected by a Mircom single stage fire alarm system. The fire alarm panel is located at the front entrance. Each floor is equipped with multiple smoke detectors. There are 2 smoke detectors located directly in front and adjacent to the subject unit. Each unit is equipped with a hardwired smoke and carbon dioxide combo detection units with battery backup located on every floor of the unit. The unit smoke alarm was located in the front hallway closet. The unit was not equipped with a fire extinguisher.

26. Jamie McMurray testified that the finding in the report that states the unit smoke alarm was located in the front hall closet meant that the smoke alarm was not where it was meant to be, it was supposed to be on the ceiling of the rental unit and that the smoke alarm was removed and put into a closet.

27. The report described the Fire Scene as follows:

Unit 707 is a bachelor unit located close to the exit stairway. There is a door from the living area to the balcony. There is a bathroom located to the left of the main entrance. The enclosed kitchen is located adjacent to the bathroom in the hallway. A main living area is adjacent to the enclosed kitchen. The tenant is known to smoke. The apartment was bare of furniture with only a mattress, couch and chair in the apartment. Cigarettes were located throughout the apartment and on the mattress adjacent to the couch. A large quantity of combustibles including clothing was located in the hallway closet.

28. The report described the Fire Scene Investigation as follows:

TCHC Manager Fire Life Safety & Emergency Management advised Risk Solutions of the fire by email on June 17, 2021 at 2035 hours. Risk initiated our investigation on June 17, 2021 at 2209 hours. Upon our arrival, we were met by the contracted cleaners in the lobby. Access to the building was restricted as were unable to enter

the front door. We contacted CSU and dispatched a unit to the building. However, as a tenant was leaving the building we gained access and proceeded to the unit. Upon arrival at the unit, it was apparent, Toronto Fire had breached the door and forced entry. We requested the building security guard be stationed at the entrance door to secure the scene. The containment contractor arrived to replace the door upon completion our investigation. Toronto Fire had overhauled the scene. We noted the smoke alarm was removed and deliberately placed in the hallway closet prior to the fire. This is a violation of Division B, Article 6.3.3.6 of Ontario Fire Code which states "No person shall disable a smoke alarm". Fire and heat signatures were noted directly above the couch. The signatures extended towards the balcony door and towards the front entrance. The couch was partially consumed during the fire. The centre cushion was fully consumed with the heat signatures extending to the left side of the couch. We removed the couch from the wall and noted cigarettes under the couch. The centre wooden supports of the couch were charred with an area of approximately 4 inches heavily charred near the middle of the consumed area. The area is consistent with the separation between 2 cushions. We can conclude based on the evidence on scene, the fire originated at the base of the couch in the separation between the left and centre cushions. The fire was caused by the careless extinguishment of smoking material.

29. The report contained photographs of the burnt couch and noted the point of origin of the fire. The report also showed photographs of the rental unit, showing severe damage to the rental unit caused by smoke and heat damage. The photographs also show a picture of the ceiling where the smoke detector was to be and only the base was there, and the smoke detector had been removed. An additional photograph showed the smoke detector sitting in a closet not attached to anything.

30. Jamie McMurray testified that these photographs are consistent with what he observed when he was inside the rental unit after the fire.

31. The report has a conclusion as follows:

We can conclude based on the evidence on scene the fire originated on the wood frame between the left and centre cushions of the couch. The cause of the fire was the careless extinguishment of smoking material. The smoking material was left to smolder. As the surface temperature of the couch material increased; it reached the autoignition temperature. A flame was created, and the fire spread throughout the cushion and couch.

32. The Landlord provided four separate invoices as follows:

- a) Invoice #1 from Direct Construction Company dated August 9, 2021, this invoice is for costs associated with the clean up of the rental unit after the fire. The total of this invoice is \$8,451.10, inclusive of HST.
- b) Invoice #2 from Risk Solutions dated June 17, 2021, this is the invoice for the fire investigation. The total of this invoice is \$1,372.95, inclusive of HST.

- c) Invoice #3 if from Pegassus Electric dated June 22, 2021, this is for the electrical work required in the rental unit. The total of the invoice is \$3,400.00 and notes plus HST, which would result in a total of \$3,842.00.
- d) Invoice #4 from Direct Construction Company dated September 7, 2021, this is for the restoration of the rental unit. The total of this invoice is \$12,478.96 and notes plus HST, which would result in a total of \$14,101.22, and provides a detailed explanation of all items and costs related to the restoration.

33. Jamie McMurray testified that after the fire before the restoration was completed the rental unit was uninhabitable.
34. He further testified that all the work has completed on the rental unit and that all the invoices have been paid in full.

Analysis

35. Based on the uncontested evidence before me I find that the Tenant has substantially interfered with the Landlord's lawful right, privilege or interest as the Tenant did not properly distinguish his cigarette butts that caused a fire in a rental unit. This action put the Landlord in a very vulnerable position where there was a risk of fire or injury to the other tenants in the rental unit. It was determined by Toronto Fire Service that the cause for the fire was directly related to the careless extinguishing of the smoking material inside the rental unit.
36. Based on the uncontested evidence before me I find that the Tenant has committed an illegal act by removing the smoke alarm in the rental unit. The Tenant deliberately removed the smoke alarm and placed it in the hallway closet. This is a violation of Division B, Article 6.3.3.6 of the Ontario Fire Code that states, "no person shall disable a smoke alarm".
37. Based on the uncontested evidence before me, I find that the tenant has seriously impaired the safety of another person.
38. With respect to subsection 66(1) of the Act, the Divisional Court's decisions in *Furr v. Courtland Mews Cooperative Housing Inc.*, 2020 ONSC 1175 (CanLII) and *Musse v. 6965083 Canada Inc.*, 2021 ONSC 1085 (CanLII) confirm that serious impairment of safety includes both actual impairment and a real risk of impairment.
39. I find that the smoke detector is a necessary fire safety device to ensure that fire is detected and cannot escape from the rental unit and find that the Tenant created a real risk of a serious impairment of safety. Removing the smoke detector creates a real and serious safety risk for everyone residing in the residential complex.

Relief from Eviction

40. 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. The Landlord's Legal

Representative did not have any knowledge of the Tenant's personal circumstances. The Tenant was not present at the hearing to provide any circumstances and there is otherwise no evidence in the record before me suggesting that the eviction ought to be refused or postponed.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated, as of April 6, 2024. The Tenant must move out of the rental unit on or before April 6, 2024.
2. If the unit is not vacated on or before April 6, 2024, then starting April 7, 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 April 7, 2024.
4. The Tenant shall also pay to the Landlord \$4.57 per day for compensation for the use of the unit from April 1, 2024, to the date the Tenant moves out of the unit.
5. The Tenant shall pay to the Landlord \$26,145.01, which represents the reasonable costs of repairing and replacing the damaged property.
6. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
7. The total amount the Tenant owes the Landlord is \$26,331.01.
8. If the Tenant does not pay the Landlord the full amount owing on or before April 6, 2024, the Tenant will start to owe interest. This will be simple interest calculated from April 7, 2024 at 7.00% annually on the balance outstanding.

March 26, 2024
Date Issued

Trish Carson
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 7, 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.