



**Order under Section 69 / 87 / 89
Residential Tenancies Act, 2006**

Citation: Morguard NAR Canada Limited Partnership v Accaputo, 2024 ONLTB 13082

Date: 2024-02-26

File Number: LTB-L-034951-23

LTB-L-079367-23

In the matter of: 213, 51 GENERATION BLVD TORONTO
ON M1B2K5

Between: Morguard NAR Canada Limited Partnership Landlord

And

Salvatore Accaputo Tenant

Corey Accaputo Former Tenant

LTB-L-034951-23:

Morguard NAR Canada Limited Partnership (the 'Landlord') applied for an order to terminate the tenancy and evict Salvatore Accaputo (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 Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully caused undue damage to the premises.

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

The Landlord applied for an order requiring the Tenant and the Former 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.

Corey Accaputo is removed as a named Tenant to this application as he was not in possession on the date the application was filed.

LTB-L-079367-23:

The Landlord applied for an order requiring Corey Accaputo (the 'Former Tenant') to:

- pay the rent and daily compensation that the Former Tenant owes.
- the Landlord's reasonable out-of-pocket costs that the Landlord incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Former Tenant, another occupant of the rental unit or someone the Former Tenant permitted in the residential complex.

This application was heard by videoconference on January 10, 2024. Only the Landlord's agent, Kathleen Swan, and the Landlord's legal representative, M. Zarnett attended the hearing.

The hearing was scheduled to commence at 9:00a.m., I waited until after 9:30 a.m. to call the matter. Neither the Tenant nor the Former Tenant were 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 the claim for compensation in the applications. Therefore:
 - The Tenant and the Former Tenant shall pay to the Landlord \$11,678.10, which represents the cost to repair or replace the damaged property caused by the Tenants collectively, and the costs associated with filing the application.
 - the Former Tenant shall also pay the Landlord \$4,411.05, which represents arrears of rent owed to the Landlord and the costs associated with filing the application.

Overview:

2. While these two applications were filed separately, it was evident that the pleadings in each application were similar, the applications were concerned similar issues and consisted of the same parties and tenancy. Given these circumstances I determined that it would be fair and expeditious if I heard the applications jointly.
3. The Tenant and the Former Tenant signed a joint tenancy agreement. The Former Tenant vacated the rental unit on February 28, 2023 in accordance with a valid N15 notice of termination. As a result of the N15, the joint tenancy was severed effective February 28, 2023 in accordance with section 47.2 of the *Residential Tenancies Act, 2006* ("Act"). This means that the Former Tenant is not responsible for any rent arrears or damages that arose after February 28, 2023. However, as set out in section 47.2(6), this does not affect any right or liability of the former tenant arising from any breach of obligations that relates to the period before the termination. This means that the Tenant and the Former Tenant are jointly liable for any rent arrears or damages that that arose before February 28, 2023.
4. The Landlord filed a previous application for arrears of rent against both Tenants (LTB-L024628-23). However, the application was filed after the Former Tenant was no longer in possession. Order LTB-L-024628-23, issued August 24, 2023, ultimately terminates the tenancy September 4, 2023, and ordered the Tenant, who was still in possession of the unit as of the hearing date, to pay rent arrears in the amount of \$16,976.25 to August 31, 2023, and daily compensation until the Tenant moves out of the rental unit.
5. The Landlord enforced the eviction of order LTB-L-024628-23 and obtained vacant possession on October 16, 2023. Therefore, the claims for termination of the tenancy pursuant to section 69 are moot and remaining issues I must consider are the claims for compensation for damages and rent arrears.

Undue Damage:

6. In the applications before me, the Landlord seeks an order compensation from both the Tenant (LTB-L-034951-23) and the Former Tenant (LTB-L-079367-23) for undue damage caused to the rental unit before the joint tenancy was severed on February 28, 2023.
7. The claims for damages in both applications are made under section 89 of the Act:

89 (1) 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,

- a) 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; and

- b) in the case of a tenant or former tenant no longer in possession of the rental unit, the tenant or former tenant ceased to be in possession on or after the day subsection 21 (1) of Schedule 4 to the Protecting Tenants and Strengthening Community Housing Act, 2020 comes into force.

Application under subs. (1)

(1.1) An application under subsection (1) may be made,

- (a) while the tenant is in possession of the rental unit; or
- (b) no later than one year after the tenant or former tenant ceased to be in possession of the rental unit.

8. LTB-L-034951-23 was filed May 1, 2023 and I am satisfied that the Tenant was in possession of the rental unit on that date. Therefore, the Board has jurisdiction to consider this application against the Tenant.
9. LTB-L-079367-23 was filed October 10, 2023 which is less than one year after the Former Tenant vacated the rental unit.
10. I am satisfied that the Landlord served the Former Tenant with the application and Notice of Hearing at least 30 days before the hearing in accordance with Rule 3.3 of the LTB's Rules of Procedure. The Notice of Hearing was served on November 6, 2023. Copies of the Notice of Hearing were also forwarded to the Former Tenant on December 14, 2023, and December 21, 2023, by the Landlord's legal representatives. Therefore, the Board has jurisdiction to consider this claim against the Former Tenant.
11. The Landlord testified at the hearing that the damages to the rental unit were caused by the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex prior to February 28, 2023.
12. The Landlord completed an inspection of the rental unit on February 8, 2023, and February 16, 2023, and relied on photos depicting the condition of the rental unit as of that date. The Landlord also relied on photos taken after receiving vacant possession. All sets of photos are consistent with respect to the extent of the damages caused by the Tenants.
13. Therefore, I am satisfied that the damage was undue and was caused by the Tenant or Former, or another occupant of the rental unit or a person whom the Tenants permitted in the residential complex prior to the tenancy being severed on February 28, 2023. I do not find that the damages were as a result of ordinary wear and tear, rather were willfully or negligently caused by the conduct of the Tenants.
14. The Landlord has incurred reasonable costs of \$11,446.90 to repair the damage and replace property that was damaged and cannot be repaired. The Landlord's claim for compensation is supported by 3 invoices for the replacement of carpet or flooring

throughout the rental unit, removing items and garbage left by the Tenants, replacing damaged doors throughout the rental unit, and re-painting the rental unit.

Rent Arrears:

15. In application LTB-L-079367-23, the Landlord also claims that the Former Tenant owes arrears of rent for the period December 2022, to February 28, 2023.
16. The Landlord's claim for rent arrears against the Former Tenant is made under section 87 of the Act:

87 (1) A landlord may apply to the Board for an order requiring a tenant or former tenant to pay arrears of rent if,

- a) the tenant or former tenant did not pay rent lawfully required under the tenancy agreement; and
- b) in the case of a tenant or former tenant no longer in possession of the rental unit, the tenant or former tenant ceased to be in possession on or after the day subsection 18 (1) of Schedule 4 to the *Protecting Tenants and Strengthening Community Housing Act, 2020* comes into force. 2020

Application under subs. (1)

(1.1) An application under subsection (1) may be made,

- (a) while the tenant is in possession of the rental unit; or
- (b) no later than one year after the tenant or former tenant ceased to be in possession of the rental unit.

17. As noted above, LTB-L-079367-23 was filed October 10, 2023 which is less than one year after the Former Tenant vacated the rental unit and the Landlord served the Former Tenant with this application in accordance with the Board's Rules. Therefore, the Board has jurisdiction to consider this claim against the Former Tenant.
18. As noted above, the joint tenancy ended on February 28, 2023, as a result of the Former Tenant moving out in accordance with an N15 notice of termination. Therefore, the Former Tenant's obligation to pay rent ended on that date.
19. As already mentioned, the Landlord filed a different application with respect to arrears of rent (LTB-L-024628-23) covering the period from [date] to [date]. The Board issued a final order on August 24, 2023. As that application was filed after the Former Tenant vacated the rental unit, that order rightfully does not include them. However, the Former Tenant and the Tenant are jointly liable for the arrears of rent owing up to February 28, 2023.
20. The lawful rent was \$2,125.20. It was due on the 1st day of each month.

21. The Former Tenant has not made any payments since the application was filed.
22. The rent arrears and daily compensation owing from December 1, 2022 to February 28, 2023 are \$4,225.05.
23. The Landlord incurred costs of \$186.00, each for filing the applications and is entitled to reimbursement of those costs.
24. As order LTB-L-024628-23 addresses arrears of rent for the time period of December 2022 to August 31, 2023, there is overlap between that order and this order. As a result of this order and order LTB-L-024628-23, the Landlord is entitled to collect a total of \$4,225.05 from either the Tenant or the Former Tenant with respect to arrears of rent for the period from December 1, 2022 to February 28, 2023
25. For greater clarity, the Landlord is entitled to \$4,225.05, which represents the arrears of rent owed jointly by the Tenant and the Former Tenant. The Landlord is not entitled to recoup this amount separately from each individual Tenant.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of October 16, 2023. The date the Landlord recovered vacant possession.
2. The Former Tenant shall pay to the Landlord \$4,225.05, which represents rent and compensation for the use of the unit from December 1, 2022 to February 28, 2023.
3. The Former Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
4. The Tenant and Former Tenant shall pay to the Landlord \$11,492.10, which represents the reasonable costs of repairing the damage and replacing the damaged property.
5. The Tenant and Former Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
6. The total amount the Former Tenant owes the Landlord is \$15,903.15. This amount represents the amounts ordered in paragraphs 2 to 5 above.
7. The total amount the Tenant owes the Landlord is \$11,678.10, which represents amounts ordered in paragraphs 4 and 5 above.
8. If the Tenant and Former Tenant do not pay the Landlord the full amount owing on or before March 8, 2024, the Tenant and Former Tenant will start to owe interest. This will be simple interest calculated from March 9, 2024 at 7.00% annually on the balance outstanding.

February 26, 2024

Date Issued

Curtis Begg

File Number: LTB-L-034951-23

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.

2024 ONL TB 13082 (CanLII)