



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

Citation: 20 Hillsborough Holdings Inc. v HelmKay, 2024 ONLTB 5285

Date: 2024-01-30

File Number: LTB-L-018764-23

In the matter of: 14, 20 HILLSBOROUGH RD
LONDON ON N6J2E8

Between: 20 Hillsborough Holdings Inc. Landlord

And

Thomas George HelmKay Tenant

20 Hillsborough Holdings Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Thomas George HelmKay (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; and
- 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.

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 damage to the 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 January 9, 2024. The Landlord's agent, Bill MacGillivray, the Landlord's representative, Cathy Corsetti, and the Tenant attended the hearing.

Preliminary Issue:

1. The Landlord's representative submitted that on March 2, 2023 the Landlord filed the L2 application with the Board, but as a result of a clerical error, the Landlord failed to apply for compensation of \$14,160.31 as a result of the Tenant's damage to the unit. The representative submitted further that the error was corrected on March 6, 2023 by the Landlord filing a request to amend the L2 application seeking compensation of \$14,160.31 for damage to the unit.

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2. The Tenant testified that he received his notice of hearing for this matter in September 2023, and he understands that the Tenant wants to evict him and wants him to pay for damages as a result of a fire in his unit. The Tenant did not consent to amending the Landlord's L2 application.
3. I am satisfied that the Landlord's request to amend their application was filed in writing as soon as the need for it was known to correct a clerical error, and that the Tenant was aware of the Landlord's request for compensation for damages in September 2023, three months before the hearing. I therefore find that the Landlord's amendment request is appropriate, does not prejudice the Tenant, and is consistent with a fair and expeditious hearing. The Landlord's request to amend their application is granted in accordance with the Board's Rules of Procedure 15.3.

Determinations:

4. 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. However, the Tenant has been granted relief from eviction on condition that unit insurance is maintained; therefore, the tenancy continues. The Tenant must pay to the Landlord \$14,346.31, on or before February 10, 2024, representing costs for damages and the application fee.

N5 Notice of Termination

5. On February 15, 2023 the Landlord served the Tenant with an N5 Notice of Termination to end the tenancy for substantially interfering with other tenants and the Landlord, as well as for willfully or negligently causing damage to the premises, as a result of a fire in the unit on November 20, 2022 that was caused by the Tenant. The date of tenancy termination in this notice is March 9, 2023. I am satisfied that the N5 notice was properly served and complied with sections 64 and 62 of the Act.
6. The N5 notice gave the Tenant an opportunity to void the notice within 7 days, from February 16, 2023 to February 22, 2023, by not causing fires in the unit, securing tenant insurance, and paying the Landlord \$14,160.31 to repair damage to the unit as a result of a fire.
7. On March 2, 2023 the Landlord filed an L2 application with the Board seeking to terminate the tenancy on the basis of the N5 notice, and as provided in paragraphs 1, 2, and 3 above, the Landlord amended this application on March 6, 2023 to also seek compensation for damages. The Tenant was in possession of the rental unit on the date the application was filed, and remains in possession of the unit as of the day of the hearing. I am satisfied that the L2 application complied with sections 69 and 70 of the Act.

N7 Notice of Termination

8. On February 15, 2023, the Landlord served the Tenant an N7 Notice of Termination, with a termination date of February 28, 2023. The notice of termination alleges that the Tenant's conduct in causing a fire in his unit on November 20, 2022 seriously impaired the safety of another person in the residential complex.

Landlord's Evidence

9. Lena MacDonald, the Landlord's Property Manager (PM), testified that there was a fire in the Tenant's unit on November 20, 2022 at approximately 7:00 pm. The PM stated that she attended the unit the evening of the fire, and the Tenant advised her that he had insurance; however, the Tenant advised her later that his insurance had lapsed a few months before the fire. The Landlord submitted a copy of the tenancy agreement, signed by the parties on October 15, 2017, indicating in paragraph 24 the requirement for the Tenant to have fire, property damage, and public liability insurance.
10. The PM testified further that the Fire Inspector arrived at the unit around 10:00 pm the evening of the fire, and advised the PM that the cheap power bars and the extension cords that the Tenant was using in the Master Bedroom were the cause of the fire. The PM acknowledged that she did not have a report from the Fire Department or the Fire Inspector that identified the cause of the fire.
11. The PM asserted that the tenants residing in each townhouse unit on either side of the Tenant's unit were evacuated for the duration of the fire, but all other tenants of the residential complex remained in their units. She added that no other units in the residential complex were damaged by the fire.
12. The PM stated that the Landlord incurred costs of \$3,651.31 to provide restoration to the unit immediately after the fire, to include drying the unit and scrubbing the air. The Landlord submitted a copy of the invoice for this restoration from Diresco, dated December 1, 2022. In addition, the PM stated that the Landlord incurred costs of \$10,905.00 to repair the fire damage to the unit and to replace damaged property that could not be repaired. The Landlord submitted a copy of the invoice for these repairs and restoration work from Global JR Contracting Inc, dated November 23, 2022. The PM confirmed that the Landlord incurred a total of \$14,160.31 in expenses to repair or replace the fire damage. The Landlord submitted two other contractor estimates for the restoration work, but the PM noted that these contractors were not selected given the higher estimates to complete the repair work.
13. The PM testified further that in December 2022 she hand delivered a letter to the Tenant advising the Tenant of his requirement to pay for the fire damage given that he did not maintain insurance as required by his tenancy agreement. She noted that at that time the Tenant provided her with a copy of homeowner's insurance; however, on investigation, she determined that the insurance was invalid. The Landlord submitted a copy of the letter given to the Tenant in December 2022, informing the Tenant of his responsibility to pay for the fire damage in his unit. The Landlord also submitted 40 photos taken by the PM the evening of the fire depicting extensive damage to the unit, particularly in the corner of the master bedroom on the second floor.
14. The PM remarked that there were no further fire incidents in the unit over the period of February 16, 2023 to February 22, 2023, and the Tenant provided the Landlord with a copy of an insurance policy during this period; however, the Tenant did not pay the Landlord \$14,160.31 to repair or replace damage to the unit during this seven-day period.
15. The PM stated that since the Landlord filed the L2 application, the Tenant continues to be generally a good Tenant, and has no rent arrears as of the day of the hearing. However,

the PM stated further that the Tenant is stubborn regarding his requirement to obtain insurance, and that as of the day of the hearing the Tenant has no insurance for his unit.

Tenant's Evidence

16. The Tenant testified that when he noticed the fire in the corner of his upstairs bedroom on the evening of November 20, 2022, he used his home fire extinguisher to extinguish the fire. The Tenant added that he suffered from smoke inhalation and was taken to the hospital. The Tenant asserted that he spoke with a fire inspector who informed him that the cause of the fire was from a spark of unknown origin. The Tenant contended that he does not believe the power bar was the cause of the spark, and explained that only two active electrical devices were plugged into the power bar/extension cord immediately before the fire, and that the heater destroyed by the fire was not functional before the fire. The Tenant stated further that the Landlord replaced all the electrical outlets in the unit after the fire.
17. The Tenant acknowledged that his unit insurance had lapsed before the fire as a result of his financial difficulties at that time; however, he renewed his insurance during the N5 void period. The Tenant confirmed that he did not pay for any of the Landlord's requested compensation of \$14,160.31 for damage to the unit, during the void period, or as of the day of this hearing. The Tenant asserted that he renewed his unit insurance in November 2023, and as of the day of this hearing, he has unit insurance.
18. The Tenant testified further that he wants to retain his tenancy given that his five and six-year-old daughters are comfortable attending the neighbourhood school. The Tenant remarked that he currently receives Canada Pension Plan disability benefits as a result of a serious illness that requires CT scans every three months.

Analysis - Voiding the N5

19. On the basis of the evidence provided, I find that the Tenant did not void the N5 notice during the void period from February 16, 2023 to February 22, 2023. During this period there were no further incidents of fire in the Tenant's unit, and the Tenant provided the Landlord with proof of insurance; however, the Tenant did not pay the Landlord \$14,160.31 to repair or replace damage to the unit during this seven-day period.

Analysis – Wilful or Negligent Damage to the Premises

20. On the basis of the evidence provided, I am satisfied that there was a fire in the corner of the unit's master bedroom on November 20, 2022 at approximately 7:00 pm. The Landlord has the burden to prove, on a balance of probability, that this fire was caused as a result of the Tenant's wilful or negligent conduct. However, the Landlord has not established with sufficient evidence that the Tenant intentionally set the fire, or through his own negligence, caused the fire. There was no direct testimony from a fire inspector, or conclusions from a fire inspector's report, regarding the definitive cause of the fire, or that the power bar/extension cord was defective, or that the power bar/extension cord was used in an improper manner by the Tenant thus creating an electrical hazard. For these reasons, I find that the Tenant, another occupant of the rental unit, or someone the Tenant permitted in the residential complex have not wilfully or negligently caused damage to the premises.

Analysis – Substantial Interference

21. On the basis of the evidence provided, I am satisfied that with respect to the unit fire on November 20, 2022, no specific conduct or actions of the Tenant, another occupant of the rental unit, or someone the Tenant permitted in the residential complex, substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of another tenant.
22. However, I find that the Tenant's failure to have fire, property damage, and public liability insurance on November 20, 2022, is a breach of the Tenant's contractual obligations in accordance with his tenancy agreement, and this breach substantially interfered with the Landlord's lawful right, privilege, and interest in the Tenant maintaining adequate insurance during the tenancy.

Analysis – Serious Impairment of Safety

23. On the basis of the evidence provided, I find that no specific conduct, actions, or omissions of the Tenant, another occupant of the rental unit, or a person the Tenant permitted in the residential complex, seriously impaired the safety of another person in the residential complex on November 20, 2022. I am satisfied that the Tenant's early use of a fire extinguisher mitigated safety risks. The Landlord did not establish, on a balance of probabilities, that the conduct, actions or omissions of the Tenant with respect to his use of a power bar/extension cord on November 20, 2022 impaired the safety of another person in the residential complex, and that this impairment of the person's safety was serious.

Compensation for Damages

24. On the basis of the evidence provided, I am satisfied that as a result of a fire in the unit on November 20, 2022, the Landlord incurred costs of \$14,160.31 to repair or replace fire damage, given that the Tenant had no fire and property damage insurance as required by the tenancy agreement. I find that compensation of \$14,160.31 to repair damage to the unit, and/or replace damaged property that can not be repaired, is appropriate and reasonable. I therefore grant the Landlord \$14,160.31 in compensation to repair or replace the damaged property, pursuant to s. 89(1) of the Act.

Daily Compensation and Rent Deposit

25. The Tenant was required to pay the Landlord \$10,797.93 in daily compensation for use and occupation of the rental unit for the period from March 10, 2023 to January 9, 2024.
26. Based on the monthly rent, the daily compensation is \$35.29. This amount is calculated as follows: \$1,073.33 x 12, divided by 365 days.
27. Since the termination date of March 9, 2023 in the N5 Notice of Termination, the Tenant paid the Landlord \$10,797.33 in rent. Therefore, as of the day of the hearing, no daily compensation was owed to the Landlord.
28. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

29. The Landlord collected a rent deposit of \$1,047.24 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$0.65 is owing to the Tenant for the period from January 1, 2024 to January 9, 2024.
30. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

Relief from Eviction

31. 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 not be unfair to grant relief from eviction subject to the condition set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.
32. I accept that the Tenant has not consistently maintained fire, property damage, and public liability insurance during his tenancy, as required by the tenancy agreement; however, I am satisfied that the Tenant now understands the implications of not having insurance, and is now prepared to maintain insurance during his tenancy. I am satisfied that it would not be unfair to the Landlord to continue this tenancy if the Tenant maintains active unit fire, property damage, and public liability insurance. The Tenant has no rent arrears as of the day of the hearing.
33. For these reasons, I find it reasonable and appropriate to provide the Tenant with an opportunity to preserve his tenancy, while minimizing prejudice to the Landlord, by granting the Tenant with relief from eviction subject to the condition set out in this order. I am satisfied that with the imposition of this condition the Tenant's conditional relief from eviction will not be unfair to the Landlord.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant maintains insurance, in accordance with the tenancy agreement, for the duration of the tenancy.
2. If the Tenant fails to comply with the condition set out in paragraph 1 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 the condition. This application is made to the LTB without notice to the Tenant.
3. The Tenant shall pay to the Landlord \$14,160.31, which represents the reasonable costs of repairing or replacing the damaged property.
4. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
5. The total amount the Tenant owes the Landlord is \$14,346.31.
6. If the Tenant does not pay the Landlord the full amount owing on or before February 10, 2024, the Tenant will start to owe interest. This will be simple interest calculated from February 11, 2024 at 7.00% annually on the balance outstanding.

January 30, 2024

Date Issued

Frank Ebner

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.