



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

Citation: Frastell Property Management Inc v Purdy, 2024 ONLTB 579

Date: 2024-01-08

File Number: LTB-L-065912-22

In the matter of: 1804, 465 RICHMOND RD
OTTAWA ON K2A1Z1

Between: Frastell Property Management Inc Landlord

And

Amanda Purdy Tenants
Maïke Pagnanini

Frastell Property Management Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Amanda Purdy and Maïke Pagnanini (the 'Tenants') because:

- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another Tenants;
- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully or negligently caused damage to the premises;
- the Tenants 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 Tenants, another occupant of the rental unit or a person the Tenants permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex;
- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully caused undue damage to the premises.

The Landlord also applied for an order requiring the Tenants 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 Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex.

This application was heard by videoconference on November 14, 2023.

Initially only the Landlord's representative Martin Zarnett and the Landlord's agent Shelly Lunn Disotell attended the hearing and the matter proceeded uncontested. The Tenant Amanda Purdy ('A.P') arrived hours after the hearing block had started and after her matter had already concluded. However, as the Landlord's representative and the Landlord's witnesses were still present, the matter was recalled. A.P was told what testimony the Landlord's witnesses had given, A.P then cross examined the Landlord's witnesses, gave testimony of her own, and made final submissions.

Determinations:

1. The Landlord only proceeded on one of the events listed on the N5 notice of termination ('N5 notice') that occurred on July 27, 2022 and their claim for reasonable out-of-pocket costs to repair undue damage to property related to that same incident.
2. All other aspects of the Landlord's application are dismissed because the Landlord did not call evidence in relation to those claims.
3. 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. Therefore, the tenancy is terminated March 31, 2024 and the Tenants shall pay the Landlord \$5,378.80 in damages.
4. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
5. The Tenants were in possession of the rental unit on the date the application was filed.

Notice of Termination

6. On October 21, 2022 the Landlord served the Tenants with an N5 notice of termination ('N5 Notice'). The notice alleges that the Tenants were served notice of work the Landlord would be doing to the rental complex pipes to drain water and alleviate air in the lines. The Tenants were advised to keep water faucets in the "off" position on July 26, 2022 and July 27, 2022. However, on July 27, 2022 a faucet in the rental unit was left in the "on" position. This caused an escape of water in the rental unit which flooded into other rental units causing damage. The Landlord estimated that it would cost \$5,378.80 to repair the damage.
7. The N5 notice alleges that these actions substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant, and that the Tenants wilfully or negligently caused damage to the premises.

8. The Tenants 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 Tenants did not void the damage claim on the N5 notice of termination in accordance with section 62(3) of the *Residential Tenancies Act, 2006* (Act).
9. However, the Tenants did not substantially interfere with the Landlord or other tenants during the voiding period and as such I find that the substantial interference allegation was voided.

The Evidence

10. The Tenants were served notice by the Landlord that in order to upgrade the plumbing riser valves at the rental complex there would be an interruption in the water supply on July 26, 2022 and July 27, 2022 between the hours of 9:00a.m. to 4:00p.m. The notice explicitly states, "please ensure that your faucets are turned in the OFF position so as to avoid any flooding problems when water supply is restored".
11. The superintendent of the rental complex, Claude Brisbois ('C.B') testified that he received a call on July 27, 2022 at 4:54p.m. from a tenant of the residential complex that there was water flooding into their apartment. C.B determined that the water was coming from an apartment above and ultimately determined that that the source of the flood was the Tenants' rental unit. C.B entered the rental unit to find the kitchen faucet was on. C.B testified that there were dishes in the sink and water was pouring out of the sink onto the floor and into the units below.
12. C.B testified that the Landlord stopped their work and turned the water back on to the rental complex around 4:00p.m. As such, the water from the Tenants' tap had likely been running for almost an hour.
13. C.B testified that after turning the tap off he used a shop vac to remove water from the affected units. Shelly Lunn Disotell ('S.L.D'), the rental complex's site administrator, testified that after the incident happened, she contacted the Landlord's flood administrator contractor but that company was not available to attend immediately. S.L.D contacted another company to attend but while they were waiting for that company to dispatch someone C.B was able to remove the water from the rental complex.
14. The Landlord introduced into evidence multiple invoices which establish that there was damage to the ceiling, walls, and flooring of multiple units in the rental complex. The Landlord spent \$5,378.80 to repair the damage to the rental complex resulting from the incident.
15. A.P testified that she does not deny that the tap was left on, perhaps by her children, and that there were dishes in the sink, but stated that what actually caused the flood was that a part of the drainpipe dislodged causing water to spill out onto the floor. A.P testified that after the incident on July 27, 2022 she noticed the part dislodged and she reconnected it. A.P testified that the part has become dislodged before.

Analysis

16. On a balance of probabilities, I find that the flood was caused by the faucet being left on, not by a part of the drainpipe being disconnected. I make that finding because I found the testimony of C.B to be credible as it was offered in a forthright manner and withstood cross examination well. C.B testified that when he entered the rental unit, he saw the tap in the on position and water spilling out onto the floor from the sink. C.B is the only direct witness to the initial flooding incident. A.P returned home after the flood was discovered and the tap was already turned off. Additionally, the video that A.P introduced into evidence that shows a part of the drainpipe being disconnected does not satisfy me that is what occurred on July 27, 2022 because the video is from a different day. The Tenant is also seen dislocating the part herself in the video.
17. On a balance of probabilities, I find that A.P's actions were negligent. A.P received notice that the Landlord would be doing maintenance on the rental unit pipes and was explicitly told not to leave any faucets in the on position to prevent flooding when the water was restored. A.P testified that it may have been her children that left the tap on, but it was A.P's responsibility to ensure that all the faucets were off. For A.P to leave the house with a faucet in the ON position after receiving notice that doing so could cause a flood, was negligent.
18. On a balance of probabilities I find that A.P's negligent actions caused undue damage to the rental complex. Multiple units had damage to the floors, wall, and ceiling.
19. A.P testified that the Landlord did not properly mitigate the damages and that she should have been allowed into the affected rental units to clean up the water to mitigate the damages. A.P testified that her unit was not damaged like the other units because of her speedy attempts to clean up the water herself.
20. I find that the actions of C.B in cleaning up the water were reasonable and did constitute mitigation of the damages. Upon learning of the flood C.B effectively located the source, turned off the water, and began the process of cleaning up the water.

Relief From Eviction

21. While I am satisfied that the Tenants would abide by a conditional order not to cause more damage, I am not satisfied that the Tenants will pay the Landlord the reasonable costs to repair the damage. This is because A.P testified that she is unable to pay the costs and A.P did not propose any form of payment plan to pay the costs off over time. I do not find it fair in the circumstances to impose a conditional order that would not make the Landlord whole again. A significant amount of damage was caused to the residential complex by A.P's actions and giving relief from eviction that does not involve payment for the damages would be unfair in the circumstances.
22. However, 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 postpone the eviction until March 31, 2024 pursuant to subsection 83(1)(b) of the Act. A.P is a single mother with two children. She testified that she needs time to find new suitable living arrangements. Additionally, I do not think that A.P poses a significant risk of causing more damage to the rental unit prior to the termination of the tenancy. The Landlord raised that there have been other issues with A.P's behaviour, however weighing all of the circumstances I find that postponing the eviction is not unfair.

Compensation for Damages

23. For the reasons stated previously in this order I find that the Tenants negligently caused undue damage to the residential complex.
24. The Landlord incurred reasonable costs of \$5,378.80 to repair the damage property. There is no reason for me to doubt the competency of the contractors hired by the Landlord and I am satisfied based on the invoices that the Landlord did incur these costs. I am also satisfied that the repairs did not constitute betterment of the rental complex and were solely for the purpose of repairing the damage related to the flood.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before March 31, 2024.
2. If the unit is not vacated on or before March 31, 2024, then starting April 1, 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 after April 1, 2024.
4. The Tenants shall pay to the Landlord \$5,378.80, which represents the reasonable costs of repairing the damage.
5. The Tenants shall also pay to the Landlord \$186.00 for the cost of filing the application.
6. The total amount the Tenants owe the Landlord is \$5,564.80.
7. If the Tenants do not pay the Landlord the full amount owing on or before March 31, 2024, the Tenants will start to owe interest. This will be simple interest calculated from April 1, 2024 at 7.00% annually on the balance outstanding.
8. The Landlord is to apply the last month's rent deposit to the last month of the tenancy and pay out any unpaid interest owing to the Tenants.

January 8, 2024

Date Issued

Amanda Kovats

Member, Landlord and Tenants 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 Tenants expires on October 1, 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.