Tribunals Ontario
Landlord and Tenant Board

Tribunaux décisionnels Ontario
Commission de la location immobilière

2023 ONLTB 79389 (CanLII)

Order under Section 69 / 89
Residential Tenancies Act, 2006

Citation: Al Jbawi v Makhija, 2023 ONLTB 79389
Date: 2023-12-19
File Number: LTB-L-053684-23

In the matter of: 902, 3515 KARIYA DR
MISSISSAUGA ON L5B0C1

Between: Omran Al Jbawi — Landlord

And

Tasha Inderlal Makhija
Nazret Haile Geday — Tenants

Omran Al Jbawi (the 'Landlord') applied for an order to terminate the tenancy and evict Tasha Inderlal Makhija and Nazret Haile Geday (the 'Tenants') because:

- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex have wilfully caused undue damage to the premises.

The Landlord applied for an order requiring the Tenants to pay the Landlord's reasonable out-ofpocket 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 15, 2023.

The Landlord, the Tenants, and the Tenants' Legal Representative Tianna Hall attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities part of the claim for compensation in the application. Therefore, the Tenants shall compensate the Landlord in the amount of 1,864.50 plus the filing fee.

2. The Tenants were in possession of the rental unit on the date the application was filed.

<u>N7 Notice of Termination</u>

3. On June 26, 2023, the Landlord gave the Tenants an N7 notice of termination deemed served the same day, with a termination date of July 6, 2023. The notice of termination contains the following allegations: That on June 5, 2023 the Tenants left the bidet in their unit's washroom on, which caused flooding in their unit and the two units below them, being units 802 and 702. While the evidence presented in the hearing suggested that the flood actually occurred on June 2, 2023, I am satisfied that the Tenants understood the contents of the N7 and the case to be met in preparing a defence, and they did not dispute that a flood occurred.
4. As of the hearing date, the Tenants had vacated the rental unit, and so the Landlord was no longer seeking termination of the tenancy based on the N7 notice.

2023 ONLTB 79389 (CanLII)

<u>Undue Damage</u>

5. The second claim in the Landlord's application, and the only claim before me at the hearing related to the cost of repairing water damage to the rental unit, unit 802 which is directly below the rental unit, and unit 702 which is two levels below.
6. The Landlord submitted three itemized invoices into evidence, two of which were charges that were passed on to him by management of the condominium complex for damage to units 802 and 702, and the third invoice being from his own contractor for repairs to the rental unit.
7. The Landlord categorized the flood related damage as being intentional, and stated that in his opinion, the Tenants had intentionally left the bidet in the on position which caused the flood.
8. The Tenants asserted that they should not be held liable for the cost of flood related repairs for two reasons, the first being that they did not intentionally cause damage, and secondly, because the Landlord had installed the bidet in the rental unit prior to them moving in, in contravention of their condominium bylaws.
9. The damage claim in this application is brought under section 89(1)(a) of the *Residential Tenancies Act,* 2006 (the 'Act'), and specifies that a damage claim can be based on wilful or negligent damage. Therefore, the Landlord is not required to prove that damage was done intentionally, and if a Landlord can prove negligence on the part of a tenant, their claim will successful.
10. The Tenants testified that the bidet had always been present in their washroom, since the day they first occupied the unit, and they submitted a declaration from a former tenant into evidence, which states that the bidet had also been present when they resided there.
11. While I am satisfied on a balance of probabilities that the bidet was installed prior to the Tenants moving in, I do not feel that the Tenants should be absolved of all potential liability in a situation where they misuse it.
12. As proof of the damage being intentional or negligent, the Landlord submitted an incident report into evidence which was created by a front desk security guard of the residential

complex. In it, the security guard outlines how the flood was discovered on June 6th, and states that in the washroom of the rental unit, water was stemming from “the jet spray near the commode” which was “left on and it was splashing large quantity of water all over the floor and to the wall”. While this security guard was not present at the hearing in order to be cross-examined by the Tenants, the Landlord did submit a video of the flooding in the washroom of the rental unit into evidence. This video shows building security speaking to one of the Tenants about how the jet spray was left on, and a significant amount of water can be seen covering the entire bathroom floor.

2023 ONLTB 79389 (CanLII)

13. In addition, the Landlord stated that when building security first knocked on the Tenants' door in order to respond to complaints of flooding in the units below, the Tenants did not open the door, which caused delays in management's response, as security then needed to source a master key in order to enter the unit without notice. The Tenants agreed that at least one of them were home when security would have knocked but that they didn't answer the door due to being on a work-related phone call.

14. Based on the incident report, the video evidence provided and the Tenants' agreement that they did not immediately answer the door for building security, I am satisfied on a balance of probabilities that the Tenants negligently caused the flood to occur by leaving the bidet in the on position.

15. In terms of damages, the Landlord submitted three itemized invoices into evidence for the following:

(a) Damage to the rental unit #902: The Landlord's receipt for repairs to the rental unit totalled $3,220.50. In the hearing, the Tenants disagreed that any repairs were required for flood-related damage to the unit's washroom and stated that they felt the Landlord had in fact done a more fulsome renovation to the entire condo unit after they had vacated and intended to pass these charges on to them. The Landlord agreed that this renovation took place after the Tenants had already vacated but stated that the invoice was for flood related repairs. A review of the invoice shows three charges which appear directly related to the washroom, and which are for removing damaged flooring, demolishing damaged tile, and supplying and installing tile in the main washroom, all which total $1,250.00. A fourth charge in the amount of $1,600.00 is listed as being for supply and installation of flooring in the living room. As damage to the living room was not discussed in the hearing and no visual evidence was presented to support a finding of damage to the living room, I find it appropriate to limit the Landlord's claim for this invoice to $1,250.00 plus HST for a total of $1,412.50.

(b) Damage to unit #802: Unit 802 is directly below the rental unit in the condominium complex. The Landlord submitted an invoice for repair to this unit into evidence, in the amount of $4,294.00, which he stated was charged to him by building management for flood related repairs. The Tenants did not contest the amount of this invoice or assert that there was no damage to unit 802. However, the invoice itself states that it is for “floor repairs in living room”. In the hearing, the Landlord focused on what damage had been caused to the washroom of unit 802, and its living room space was not mentioned. In addition, the Landlord submitted a video into evidence of the damage to unit 802 which was taken by building security, and which shows water leaking from the ceiling of the bathroom onto the washroom floor. There is no video evidence showing damage to the

living room itself. Since the invoice does not directly state that the work completed related to the washroom of unit 802, no amount will be ordered in related to this invoice.

(c) Damage to unit #702: Unit 702 is two levels below the rental unit. The Landlord submitted an invoice for repair to this unit in the amount of $452.00 which he stated was charged to him by building management for flood related repairs. The Tenants did not contest the amount of this invoice or assert that there was no damage to unit 702. This invoice explicitly states on it that it is for ceiling repairs to the washroom. This is consistent with what the Landlord argued in the hearing – that the flood from the rental unit affected the washroom of unit 702. As such I find it appropriate to award $452.00 in relation to this invoice.

2023 ONLTB 79389 (CanLII)

16. Based on the security incident report, video evidence and testimony of the parties I find that the Tenants negligently caused damage to the rental unit and that the Landlord has incurred reasonable costs of $1,864.50 to repair the damage. 17. In the hearing, the Tenants' Representative requested costs in relation to her appearance. As the Landlord's claim has been successful, no costs will be ordered. **It is ordered that:**

1. The Tenants shall pay to the Landlord $1,864.50 which represents the reasonable costs of repairing the damage.
2. The Tenants shall also pay to the Landlord $186.00 for the cost of filing the application.
3. The total amount the Tenants owe the Landlord is $2,050.50.
4. If the Tenants do not pay the Landlord the full amount owing on or before December 29, 2023, the Tenants will start to owe interest. This will be simple interest calculated from December 30, 2023 at 7.00% annually on the balance outstanding.

December 19, 2023
Date Issued

Madeline Ntoukas
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.