



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

Citation: Golden Bay Inc v Czornodolsky, 2023 ONLTB 79917

Date: 2023-12-08

File Number: LTB-L-032760-22

In the matter of: UNIT 1, 153 DUNN AVE TORONTO
ON M6K2R8

Between: Golden Bay Inc Landlord

And

Megan Czornodolsky Tenant

Golden Bay Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Megan Czornodolsky and Megan Czornodolsky (the 'Tenant') because:

The Landlord 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 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 June 27, 2023.

The Landlord and the Tenant attended the hearing.

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. Therefore, the Tenant will pay the amount below and it will be determined what date this payment is required and if relief from an eviction should be granted.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

4. There is no last month's rent deposit.

Compensation for damages

5. 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. The Landlord claimed \$3,000.00 in repairs to the unit and a unit within the residential complex.

Water Damage

6. There is no dispute the residential property suffered water damage. A small amount in the Tenant's unit and more water damage in the unit below. Although there was more damage in the unit below, it was not a significant amount of damage.
7. There was water damage along the wall underneath the window in the Tenant's unit, and water damage to the ceiling and floor of the unit below the Tenant.
8. An individual living in the basement unit below the Tenant complained about water coming through the ceiling on or about August 29, 2021.
9. The Landlord claimed the water came from the Tenant's air conditioning unit, the Tenant claimed it was because the home was old and water came through the windowsill.
10. Upon inspection, the repairs from the water damage to the unit below commenced shortly after the incident and were completed and fully restored in a timely manner.
11. An invoice was sent to the Tenant with respect to the repairs in the amount of \$1,497.25.
12. There have been no further water damage issues or water entering the property since the repairs took place.
13. The only repairs that took place were the replacement of water damaged drywall.

Rainfall before, during and after incident

14. The Landlord testified on August 7, 2021 (before the repairs) a significant rainstorm occurred which resulted in approximately 20.4 mm of rain as reported by the Government of Canada rainfall report. No water damage was reported to either unit.
15. The Landlord testified on August 28, 2021 (approximate date of incident) approximately 23.6mm of rain occurred, along with heavy winds as reported by the Government of

Canada rainfall report. This rainfall resulted in the discovery of the water damage to both units.

16. The Landlord testified a significant rainstorm occurred on September 7, 2021 (after the repairs) which resulted in approximately 28.2 mm of rain with heavy winds as reported by the Government of Canada rainfall report. No water damage was reported to either unit.
17. The Landlord testified a significant rainstorm occurred on September 22, 2021 (after the repairs) which resulted in approximately 56 mm of rain with heavy winds as reported by the Government of Canada rainfall report. No water damage was reported to either unit.

Tenant's air condition unit

18. The air conditioning unit was installed by the Tenant and maintained by the Tenant. It was not installed by the Landlord.
19. The Tenant claims the air conditioning unit is in good working order and never had any issues.

Responsibility of water damage

20. All parties acknowledged there was a storm the day before the water damage was reported. All parties also acknowledge the water came into the complex via the window area of the Tenant's unit. There is no way to determine the exact cause. Was the water from the air conditioning unit itself? Did the air conditioning unit become loose either from a storm or over time allowing a gap, crack or seem to allow water to enter? Did the Tenant remove the air condition unit and simply left a window open during a major storm? The true known cause, only the Tenant will know.
21. With the above being said in any civil matter, I must consider the "balance of probabilities", which means based on 51% who is responsible on a 51% basis, for water getting into the residential complex.
22. Under the disclosed circumstances, specifically the timeline of events of the water damage, on the balance of probabilities (51%) I find the Tenant is negligent for the water damage, and as such, responsible for the damage.

Receipt of Damage

23. The Landlord submitted a receipt from a drywall company Alpha Renovations.
24. The Landlord did not have the drywall installer testify at the hearing.
25. The receipt did not include the address where the work occurred. The receipt simply stated, "drywall repair (labour) - \$1100" and drywall repair (material) - \$250 ".

26. Although I do not believe the Landlord to be untruthful, this receipt could be for any property or any work. The receipt simply lacks the adequate information to verify to allow this receipt as credible evidence in its entirety.
27. Based on the evidence submitted by the Landlord I do believe this to be excessive for the cost of drywall replacement to the basement unit. This is supported by the Landlord's own evidence of their submitted photos.
28. Based on the Landlord's own evidence, the damage to the Tenant's unit was significantly less in comparison to the unit below.

Cost for damages

29. It was clear there was some water damage to both the Tenant's unit and the residential complex.
30. The Landlord claimed, the repairs would cost "the same for her unit" as the unlabelled receipt for the basement unit.
31. The Landlord did not provide any estimates for the upstairs unit and as stated, the damage to the upstairs unit was significantly less.
32. The Landlord also failed to provide before and after photos of what the property looked like before the damage and what the property looked like after the damage.
33. The Tenant claimed the Landlord was seeking \$3000 because the Landlord received a \$3000 warning letter from the city for not maintaining the lawn. It is alleged the Tenant and the Landlord had a previous agreement where the Tenant would mow the lawn.
34. In considering the circumstances above, the fact that water damage does exist but no way to determine the actual cost I am awarding the Landlord \$1,000.00 in damage for the cost of drywall replacement to both the Tenant's unit and the residential complex.
35. I am denying the Landlord the opportunity to submit post hearing documents. It is an applicant's responsibility to come to the hearing prepared with adequate and appropriate evidence, not give an applicant an additional opportunity to re-litigate their alleged claim.
36. This damage compensation concludes the compensation for both the Tenant's unit and the unit below the Tenant's found within the residential complex.
37. The Landlord's reasonable costs of \$3,000.00 to repair the damage is denied, and in the alternative is awarded \$1,000.00 to replace the damaged property.

Relief from eviction

38. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act').. The Tenant is a long time Tenant of the

residential unit and has been her home for over 10 years. The incident which occurred was unfortunate, and although I find the Tenant to have been negligent and responsible it was clear it was not intentional or malicious on behalf of the Tenant. The Tenant's mother lives around the corner, her two best friends, her therapist and says this is the only place she could afford to be able to live in her current city. Under all of these circumstance, I find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below:
 - The Tenant shall pay the Landlord \$1,000.00 on or before July 1, 2024, which represents the reasonable costs of repairing the damage and/or replacing the damaged property.
2. If the Tenant fails to comply with the conditions 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 a condition. This application is made to the LTB without notice to the Tenant.
3. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
4. The Tenant shall pay the Landlord \$186.00 on or before January 31, 2024.
5. The total amount the Tenant owes the Landlord is \$1,186.00.
6. If the Tenant does not pay the Landlord the amount owing for costs on or before January 31, 2024, the Tenant will start to owe interest. Should the Tenant not pay the amount of \$1,000 owing for damage on or before July 31, 2024, the Tenant will start to owe interest. This will be simple interest calculated from at 7.00% annually on any balance outstanding.
7. This concludes all issues from the water damage surrounding the date of the incident in question.

December 8, 2023

Date Issued

André-Paul Baillargeon-Smith

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.