



Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

Citation: Daoud v Whitney, 2023 ONLTB 77643

Date: 2023-12-01 **File Number:**
LTB-L-052190-22-RV

In the matter of: 209, 360 Cumberland Street Ottawa
Ontario K1N0B1

Between: Samar Daoud Landlords
Wisam Daoud

And

Joseph Whitney Former Tenant

Review Order

Samar Daoud and Wisam Daoud (the 'Landlords') applied for an order requiring Joseph Whitney (the 'Former Tenant') to pay the rent and daily compensation that the Former Tenant owes.

The Landlords also applied for an order requiring the Former Tenant to pay the Landlords' reasonable out-of-pocket costs that the Landlords has 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 resolved by order LTB-L-052190-22 issued on August 25, 2023.

On September 22, 2023, the Landlords requested a review of the order.

On September 26, 2023, interim order LTB-L-052190-22-RV-IN was issued.

This application was heard in by videoconference on November 14, 2023. Only the Landlord, W. Daoud (WD), attended the hearing. As of 9:30 am, the Tenant was not present or represented although properly served with notice of the hearing by the LTB. There was no request for adjournment.

Determinations:



Request to Review

1. The hearing of the application took place on July 13, 2023. Only WD attended the hearing. WD made evidence and submissions regarding the application and was advised that his application would be granted. However, by way of order issued on August 25, 2023, the hearing member dismissed the application because they had found that WD was not authorized to sign the application pursuant to section 185 of the *Residential Tenancies Act, 2006* (the 'Act').
2. At the review hearing, WD testified that he is the power of attorney for the Landlord and their brother. He does not practice law and has not provided legal services for anyone else. He did not get paid to fill out or sign the application. He was authorized to sign the application from the Landlord.
3. I am satisfied that the Board made a serious error in law in finding that WD did not have authority to sign on the Landlord's behalf. Section 185 of the Act states:

185 (1) An application shall be filed with the Board in the form approved by the Board, shall be accompanied by the prescribed information and shall be signed by the applicant. 2006, c. 17, s. 185 (1).

(2) An applicant may give written authorization to sign an application to a person representing the applicant under the authority of the *Law Society Act* and, if the applicant does so, the Board may require such representative to file a copy of the authorization. 2006, c. 17, s. 261 (3).

4. The Law Society Act By-Law 4 subsection 30(5) states that a family member whose profession is not legal services or the practice of law, who provides legal services only for and on behalf of related person and who does not receive compensation is permitted to provide legal services that a licensee who holds a Class P1 licence is authorized to provide without a licence. I find that WD falls under this exemption based on his uncontested evidence. Therefore, the request to review is granted. The Landlord's application was heard de novo.

De Novo

5. As explained below, the Landlords proved the allegations contained in the application on a balance of probabilities. Therefore, the Tenant shall pay to the Landlords compensation for undue damage to the rental unit.
6. I am satisfied that the Landlords 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. These documents were served on October 18, 2023 by email. This method of



service is accepted by the Board as during the tenancy the Former Tenant had consented in writing to service by email.

7. The Former Tenant vacated the rental unit on March 31, 2022. The application was filed within one year after the Former Tenant ceased to be in possession of the rental unit.
8. The Landlords made a request to withdraw the application for arrears as they already had a hearing for the arrears of rent. The request to withdraw was granted.
9. The Landlords submitted that the Tenant caused undue damage to the rental unit. Specifically, the Tenant painted the rental unit a dark grey colour and used LED strips on the wall, ripping off paint and drywall. Submitted into evidence were photographs of the damage. Also submitted into evidence was an invoice from iTeam Canada for the cost of repairing the damage.
10. Section 89 of the *Residential Tenancies Act, 2006* (the 'Act') provides that a landlord must establish that it is more likely than not that the tenant, an occupant or a guest, wilfully or negligently caused each item of property damage claimed.
11. The language of section 89 requires damage to be undue. It is recognized that some damage will occur over the regular course of time, due to regular wear and tear in a residential complex. Reasonable wear and tear would not normally constitute "undue damage."¹
12. I am satisfied that the painted and chipped walls were not a result of regular wear and tear. The photographs submitted into evidence demonstrate that the paint is substantially different from when the Former Tenant gained possession of the rental unit and the paint required to return the rental unit back to the initial state is more than required. The chipped paint from the LED lights is also substantial.
13. As such, the Former Tenant is required to pay to the Landlord the cost to repair the damage. I find that the amount set out in the invoice is reasonable in the circumstances.

It is ordered that:

1. The request to review order LTB-L-052190-22 issued on August 25, 2023 is granted. The order is cancelled and replaced with the following.
2. The Former Tenant shall pay to the Landlords \$1,866.75 for the cost to repair the damage.
3. The Former Tenant shall pay to the Landlords \$201.00 for the cost of filing the application.
4. The total amount the Former Tenant owes the Landlords is \$2,067.75*.

¹ *Kamoo v. Brampton Caledon Housing Corp.* 2005 O.J. No. 3911.



5. If the Former Tenant does not pay the Landlords the full amount owing on or before December 12, 2023, the Former Tenant will start to owe interest. This will be simple interest calculated from December 13, 2023 at 6.00% annually on the balance outstanding.

December 1, 2023 _

Date Issued

Camille Tancioco

Member, Landlords 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.