



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

Citation: Goncharow v Miller, 2023 ONLTB 78030

Date: 2023-11-30

File Number: LTB-L-002328-22

In the matter of: 66 ALBERT ST
ST CATHARINES ON L2R2G9

Between: Nick Goncharow Landlord

And

Thomas Miller Tenant

Nick Goncharow (the 'Landlord') applied for an order to terminate the tenancy and evict Thomas Miller (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.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

Nick Goncharow (the 'Landlord') also applied for an order requiring Thomas Miller (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 November 22, 2023.

The Landlord's Legal Representative, Curt Anderson attended the hearing.

As of 9:38 am, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Preliminary Issue:

1. The Landlord requested an amendment to the L2 application to amend the damage amount requested in the L2 application from \$18,080.00 to \$7,537.35. This amount represents a previous estimate and the actual cost of repair and replacement of the damages.
2. I consented to the request to amend the L2 application. There is no prejudice to the Tenant to allow the Landlord to amend to a lesser amount as originally requested on the L2 application.

Background:

3. The Tenant was in possession of the rental unit when this application was filed on January 13, 2022.
4. The Tenant vacated the rental unit on September 30, 2022.

Determinations:

5. The Tenant is no longer in possession of the rental unit. Therefore, I do not need to consider the Landlord's notice of termination, and the application will proceed on a damage only claim.
6. As explained below, the Landlord has proven on a balance of probabilities the claim for compensation in the application related to the damage.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Compensation for Damages

8. 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 Tenant damaged the walls, ceilings, bathroom flooring, leaking toilet which has caused structural damage to the floor joists, shower stall and refrigerator.
9. The Landlord has incurred reasonable costs of \$6,294.35 to repair and replace the damaged walls, ceilings, bathroom flooring, toilet, floor joists, shower stall and refrigerator.

Landlord's Uncontested Evidence

Damage to Walls, Ceiling, Bathroom Flooring, Toilet, Floor Joists and Shower Stall

10. The Landlord's Legal Representative testified that the damages were found at an inspection by the Landlord, and at no time did the Tenant report these damages to the Landlord.
11. The Landlord's Legal Representative provided an estimate from Dec 2, 2021, from Orange List Property Management in the amount of \$15,999.00 plus tax. This estimate was for the following:
 - a) Bathroom to be completely gutted; rip out and replace shower, flooring including subfloor, baseboards, drywall, vanity and replace toilet.
 - b) leaking toilet down into front entry creating mold; rotten floor joists need to be restructured.
 - c) rip out/replace drywall around the front door and living room entry. d) replace ceiling tiles.
 - e) painting
12. The Landlord's Legal Representative provided photographs of the damage to the rental unit. These photographs show a significant amount of damage to the bathroom, including the shower stall which has been taped together using black tape, substantial cracking and damage to the ceramic tiles in the bathroom and damage to the toilet.
13. Photographs were also provided of the damage to the walls and ceilings. The ceiling tiles are severely stained which appears to be water stains and some ceiling tiles are completely missing. There are several photographs that show a significant amount of large holes and damage to the walls.
14. The Landlord provided copies of invoices and paid receipts as follows:
 - a) Mark Anthony & Son General Contracting- \$2,706.00, which represents labour to tear out bathroom floor, repair floor joists, install new floor joists, lay new plywood, floor screw all plywood and a dump run.
 - b) An e transfer to Colby Ferreira- \$62.87, this is the individual the Landlord hired to do the painting, and this represents initial supplies Colby Ferreira purchased.
 - c) An e transfer to Colby Ferreira- \$1,890.00, which represents the cost for labour of painting.
 - d) Dulux Paints- \$87.54, which represents paint and paint supplies.
 - e) Rona-\$51.53, which represents paint and paint supplies.
 - f) Rona- \$121.55, which represents paint and paint supplies.
 - g) Rona-\$77.26- which represents paint and paint supplies.
 - h) Rona- \$76.82- which represents paint and paint supplies.
 - i) Rona- \$170.48 which represents paint and paint supplies.
 - j) Rona-\$69.12, which represents paint and paint supplies.
15. The Landlord's Legal Representative testified the Landlord had a new toilet in his inventory and used that toilet to replace the toilet in the rental unit, and the Landlord has put a value of the toilet in the amount of \$250.00.

16. The Landlord's Legal Representative testified that the Landlord has not included any labour costs associated to the time he spent helping repair the damages inside the rental unit.
17. The Landlord's Legal Representative testified that when the Tenant moved into the rental unit and that the rental unit was in good condition.

Refrigerator

18. The Landlord's Legal Representative testified that there was damage to the refrigerator, and he understood the damage to be severe and the refrigerator was destroyed.
19. The Landlord provided a copy of an invoice from Lowes, in the amount of \$731.18 for the purchase of a new refrigerator.

Pest Control

20. The Landlord's Legal Representative testified that after the Tenant vacated the rental unit it was discovered that there were cockroaches in the rental unit. The Landlord had to have the rental unit sprayed.
21. The Landlord provided a copy of the invoice from Truly Nolen in the amount of \$1,243.00.

Analysis

22. Under section 89 of the Act, a Landlord may apply to the Board for an order requiring a tenant to pay the reasonable costs that the Landlord has incurred or will incur for the repair of or, where repairing is not reasonable, the replacement of the damaged property, if the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex wilfully or negligently causes undue damage to the rental unit or residential complex and the tenant is in possession of the rental unit.
23. I accept the uncontested evidence and testimony of the Landlord that the Tenant has wilfully or negligently caused undue damage to the walls, ceiling, bathroom flooring, floor joist, shower stall and refrigerator.
24. While the Landlord did not provide a picture of the damaged refrigerator, I am persuaded by the uncontested testimony of the Landlord's Legal Representative that the refrigerator had significant damage and was required to be replaced.

25. I am granting the Landlord's request for an order requiring the Tenant to pay the Landlord \$6,294.35, because I am satisfied based on the Landlord's uncontested evidence that this represents the reasonable out of pocket expenses that the Landlord has incurred to repair and replace the damage to walls, ceiling, bathroom flooring, toilet, floor joist, shower stall and refrigerator.
26. I find the Tenant should have reported the leaking toilet to the Landlord and because of not doing so the damages are more substantial than they would have been if the Tenant had promptly reported this issue to the Landlord.
27. I also find that it was reasonable for Landlord to minimize the costs by doing some of the labour himself.
28. I also find the replacement cost of toilet, being \$250.00 to be a reasonable cost to replace the toilet and I have considered both the cost of the toilet and the labour to install.
29. I will not be considering the Landlord's claim for Pest Control as this did not form a part of the N5 notice that was served on the Tenant and was only discovered after the Tenant vacated the property.
30. Further, I find the charges related to Pest Control treatments are not for the repair or replacement of damaged property. Rather, the costs are associated with substantial interference with the landlord's reasonable enjoyment or lawful right, privilege or interest, and the Landlord incurred out-of-pocket expenses as a result of the conduct. This type of out-of-pocket expense can be claimed under section 88 (1) of the Act. Therefore, I am denying the Landlord's claim under section 89 of the Act.

It is ordered that:

1. The Tenant shall pay the Landlord the amount of \$6,294.35, which represents the reasonable costs for replacing and repairing the damaged property.
2. The Tenant shall also pay the Landlord \$186.00 for the cost of filing this application.
3. If the Tenant does not pay the Landlord the full amount owing on or before December 14, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 15, 2023 at 7.00% annually on the balance outstanding.

November 30, 2023

Date Issued

Trish Carson

Member, Landlord and Tenant Board

File Number: LTB-L-002328-22

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.

2023 ONLTB 78030 (CanLII)