



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

Citation: Finnegan v Patey, 2023 ONLTB 77220

Date: 2023-11-30

File Number: LTB-L-063007-22

In the matter of: Upper, 3 KLINE'S AVE WELLAND
ON L3C1Z7

Between: Robert Delano Finnegan Landlord

And

Brielle Patey Tenant

Robert Delano Finnegan (the 'Landlord') applied for an order requiring Brielle Patey (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 15, 2023.

The Landlord, the Landlord's Legal Representative, Sidney Sheridan, and the Tenant attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the claim for compensation in the application. Therefore, the Tenant is required to pay to the Landlord \$190.97 for replacing the damaged smoke detector and \$300.00 for the fridge.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The Tenant vacated the rental unit on April 1, 2023 pursuant to a previous Board order unrelated to this application.

Rescinding Vacate Notice

4. This was a fixed term tenancy beginning June 1, 2022 and ending on May 31, 2023.
5. The Tenant sent an e-mail to the Landlord on July 12, 2022 indicating her intention to terminate the tenancy due to job loss. On July 28, 2022 the Tenant confirmed her intent to vacate effective September 1, 2022.
6. On August 19, 2022 the Tenant advised the Landlord she would no longer be vacating the unit as she could not find suitable housing elsewhere and she intended to stay in the unit until the end of the lease term.
7. The Landlord testified after he received confirmation of her intent to vacate, he began advertising the unit for rent. He had prospective tenants view the apartment and spent time drafting the new lease for the prospective tenants. The Tenant did not dispute the Landlord attended the property to show the unit to potential renters. The Landlord alleged he spent 12-16 hours of his time advertising and showing the unit.
8. The Landlord requested compensation for 12 hours of his time at \$20.00 per hour. The Act does not provide the Board with the authority to consider a claim for compensation of time spent at an hourly rate.
9. Section 88.1 of the Act does allow the Board to award the Landlord compensation for “reasonable out-of-pocket expenses” the Landlord incurred or will incur because of the Tenant’s conduct that substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another lawful right, privilege or interest of the landlord. I do not find that time spent showing the unit to prospective tenants can be considered a reasonable out-of-pocket expense. Therefore, I do not find the Tenant can be ordered to pay for the Landlord’s time.

Smoke and Carbon Monoxide Detector

10. It is undisputed the Tenant caused damage to the detector inside the rental unit. The Tenant testified when she returned home on September 30, 2022, she found the detector to be sounding. She could not silence the alarm, so removed the detector from the ceiling to remove the batteries. In doing so, the Tenant caused the plastic shell of the detector to break.
11. The Tenant immediately informed the Landlord of the damage. She attempted to replace the device herself but could not find that specific model in any local hardware store.
12. The Landlord provided a photo of the broken detector and a receipt from a hardware store from purchasing a replacement of the same detector. The Tenant did not dispute the replacement was the same as the previous model.
13. The Landlord has incurred reasonable costs of \$190.97 to replace the device and is entitled to be reimbursed for those costs.

14. The Landlord alleged locating the new device required 6 hours of time to drive to different hardware stores in neighbouring cities. The Tenant testified she asked the Landlord where she could find the device, and rather than telling her he did the work himself and she should not have to pay for his time. The Landlord requested reimbursement for 3 hours of time at \$20.00 to search for the device.
15. For the same reasons in paragraph 8 of this order, I do not find the Board has the authority to order the Tenant to pay for the Landlord's time.

Refrigerator

16. It is undisputed when the Tenant viewed the rental unit before signing the lease and after moving in, the fridge was not brand new and was missing shelves in the door. The Landlord estimates the fridge was about 7-10 years old. It is undisputed between the parties, there was a conversation amongst them about replacing the fridge eventually.
17. The Landlord testified he intended to replace the fridge but realized it would be difficult to source one due to the delays from manufacturers since the outset of COVID-19. The Landlord alleged he communicated this to the Tenant and advised he would not be replacing the fridge. The Tenant did not dispute this claim.
18. The Tenant alleged the fridge was emitting a burning smell, and there were burn marks on the wall behind the refrigerator. The Tenant alleged she informed the Landlord of the problem by phone call but was unable to provide a specific date. The Tenant alleged she had photos of the burn marks on her old phone, but no longer had access to those photos.
19. The Tenant did not provide evidence or testimony stating the fridge stopped working. The Tenant's complaints were about the shelves that were missing and an alleged burning smell and marks on the wall. I do not find the Tenant provided sufficient for me to conclude the fridge was not functioning when she chose to replace it with another used fridge.
20. The Tenant testified at the end of August 2022 she sourced a used fridge online. She paid a total of \$300 for the fridge, the removal of the old fridge, and installation of the new fridge.
21. After the Tenant vacated, she left the fridge she purchased in the unit. The Tenant alleged the fridge was in working order, and the Landlord did not dispute that claim.
22. The Landlord alleged in July of 2023, the fridge broke, and he was required to replace it. The Landlord provided an e-mail exchange with Goemans Appliances for a quote for a new fridge on August 22, 2022. In that exchange, the representative from the store provides a quote for \$925.00 for one fridge and an additional quote for \$1,100.00 for another fridge. The Landlord did not provide a receipt or invoice for the fridge he purchased in July of 2023.

23. The Landlord requested compensation in the amount of \$925.00 plus HST for replacing the fridge. Pursuant to O. Reg. 516/06, the useful life of a refrigerator is considered 15 years. Since the Landlord could not provide any sufficient evidence for the age of the original fridge, I will consider the fridge to be on the older age of the scaled given, being 10 years. Given the lack of sufficient evidence provided by the Tenant to support her claim the fridge was emitting a burning smell and needed to be replaced, I find the Landlord is entitled to receive \$300.00 from the Tenant for the fridge.
24. The Landlord incurred a cost of \$186.00 to file this application and is entitled to be compensated for the same.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of April 1, 2023.
2. The Tenant shall pay to the Landlord \$490.97, which represents the reasonable costs of replacing the damaged property.
3. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
4. If the Tenant does not pay the Landlord the full amount owing on or before December 11, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 12, 2023 at 7.00% annually on the balance outstanding.

November 30, 2023

Date Issued

Elena Jacob

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.

