



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

Citation: Accent Real Estate Corp c/o Bloom Property Mgmt v Wells, 2023 ONLTB 76291

Date: 2023-11-29

File Number: LTB-L-056986-22

In the matter of: 1, 299 SIMCOE ST
LONDON ON N6B1J4

Between: Accent Real Estate Corp c/o Bloom Property Mgmt Landlord

And

Laura Mae Wells Tenant

Accent Real Estate Corp c/o Bloom Property Mgmt (the 'Landlord') applied for an order to terminate the tenancy and evict Laura Mae Wells (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.

The Landlord also 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 October 31, 2023.

The Landlord's Representative, Robert Rose, and the Tenant's Agent, Ken McIntyre ("KM"), and the Tenant attended the hearing. Howard Wilson ("HW") and Cindy Ashley ("CA") appeared as the Landlord's witnesses. Eric Luth ("EL") appeared as the Tenant's witness.

Determinations:

Preliminary Issue – New Landlord

1. The Landlord's Representative requested an amendment to the Landlord's name as the rental property was sold since the application was filed. The amendment was filed with the Board on October 17, 2023. The Tenant's Representative did not object and. As such, the application was amended to reflect the new Landlord.

2. 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. Considering section 83 of the *Residential Tenancies Act, 2006* (the 'Act'), I find it reasonable to afford the Tenant an opportunity to preserve the tenancy with a conditional order set out below.
3. The Tenant was in possession of the rental unit on the date the application was filed.
4. The Landlord's L2 application is based on a first N5 notice served on the Tenant on September 24, 2022 with a termination date of October 16, 2022 (the "N5"). The N5 alleges that by not notifying the Landlord of a flood which caused damage to the rental unit or the residential complex, the Tenant (1) substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord; and (2) wilfully or negligently caused undue damage.
5. The alleged interference and damage arise from the same incident on August 13, 2022 with water overflowing from the toilet onto the bathroom floor in the rental unit. The Landlord claimed this leakage damaged the bathroom floor and the furnace beneath the rental unit. The damages claimed on the N5 was \$4,763.49.

Substantial interference

6. The 'voiding period' for the notice of termination was September 25-31, 2022. There was no evidence before me of any subsequent conduct of the type described in the N5 during this period. Therefore, I find that the Tenant voided the substantial interference portion of the N5 in accordance with section 64(3) of the *Residential Tenancies Act, 2006* ("Act").

Undue Damages

7. The Tenant did not repair the damage or pay the Landlord the reasonable costs to repair the damage or make arrangements satisfactory to the Landlord within seven days after receiving the N5 notice of termination. Therefore, the Tenant did not void the portion of the N5 alleging undue damage.

Landlord's Evidence

8. CA appeared as the Landlord's first witness. CA was the property manager of the previous Landlord and was the property manager of the rental property at the time the incident on the N5 occurred.
9. CA testified that she was notified of the flood on August 13, 2022 by an email from KM on August 14, 2022. KM is the Tenant's Agent and the authorized contact person for the Landlord. The Landlord was provided with videos taken by EL when EL arrived at the rental unit to assist the Tenant with the flood on August 13, 2022. EL is a friend of the Tenant.
10. CA testified the Tenant did not notify the Landlord that there was an issue with the toilet prior to August 14, 2022. When CA visited the unit, the toilet was already unplugged and the float inside the tank was broken.

11. CA testified that August 13, 2022 was not the first-time water from the Tenant's bathroom has leaked into the lower basement. An email dated December 12, 2021 from CA to the Tenant's previous support person, Josh Schouwstra, was submitted into the evidence informing him water has been found on the Tenant's bathroom floor before.
12. CA testified that the floor in the bathroom of the rental unit was replaced prior to the Tenant moving in on June 1, 2016. Pictures taken on November 10, 2021 were submitted into evidence. The pictures show that the floors were damaged, and patches of the floor were rotten or discoloured. CA testified that the floor was saturated with water on August 13, 2022 and this further damaged the floors to the extent that the floor would need to be replaced. The Landlord submitted into evidence a quote dated September 1, 2022 to replace the bathroom floor in the amount of \$1,390.44. The floor had not been replaced as of the hearing date.
13. CA testified that the water leaked into the air duct on the bathroom room and into the furnace. As a result, the Landlord had to replace the furnace. The Landlord submitted into evidence an invoice from H&C Solutions Heating & Cooling Ltd. dated September 20, 2022 to replace the furnace in the amount of \$3,373.05.
14. CA testified the deductible for the Landlord's insurance is \$10,000.00 and as a result, the Landlord elected to pay for the new furnace out-of-pocket.
15. HW appeared as the Landlord's second witness. HW is the owner and operator of H&C Solutions Heating & Cooling Ltd. HW was contacted by the Landlord to inspect the furnace at the rental property after the incident on August 13, 2022.
16. HW testified that water had gotten into the electrical parts and wiring harness of the furnace that that based of his knowledge of the pipes in the property, he was able to trace the water source back to unit 1. HW had previously been inside in unit 1, which is the rental unit, 6 years ago to resolve a stove issue.
17. HW testified that the damaged furnace was approximately 5 years old and the cost to replace it was cheaper than a normal replacement as he was able to reuse the gas line.
18. HW testified that furnaces have an average life span of 20 years and that the new furnace was similar to the damaged furnace in terms of BTU rating and efficiency.
19. HW testified that wiring harness was a special order, and it would have taken 2 months to get this part and that repairing the compromised components on the damaged furnace would have been \$500.00 cheaper if all the parts were available.
20. The Landlord submitted that it was reasonable for the Landlord to replace the furnace given the time frame and the need for a furnace to provide heat as required by the City's Vital Services By-law.

Tenant's Evidence

21. EL appeared as the Tenant's witness. EL and the Tenant attends the same church and EL has been assisting the Tenant with various tasks. EL testified that he received a call from the pastor of their church after the Tenant called the pastor on August 13, 2022. EL testified he arrived at the Tenant's unit within 20-25 minutes of receiving the call.

22. EL testified that the toilet was plugged and overflowing and there was water on the bathroom floor. He observed that the float in the toilet tank was broken and that the water stopped when he turned off the valve at the bottom of the toilet. EL agreed that the floor was saturated with water.
23. EL testified that he unplugged the toilet, stopped the water leak, and mopped the floor. Neither himself nor the Tenant contacted the Landlord on August 13, 2022.
24. I note that the Tenant was present but did not participate in the hearing.

Analysis

25. There is no dispute that the toilet overflowed, and a flood occurred in the bathroom of the rental unit on August 13, 2022.
26. Based on the evidence before me, I am satisfied, on the balance of probability, that the Tenant caused undue damage to the rental unit. The fact that the toilet was clogged was not in dispute. I find that it is more likely than not that the Tenant clogged the toilet. Further, the Tenant took no reasonable steps to inform the Landlord and/or prevent damage. Rather than shutting off the shut-off valve on the toilet to stop the water overflow or call the Landlord immediately, the Tenant chose to contact her supports from her church. It is likely that the damage to the furnace would have been lessened or not occurred if the Landlord was notified and responded in a swifter manner. With EL's response, the Landlord was also denied the ability to investigate the clog.
27. CA testified that the Tenant does not contact the Landlord if issues in the rental unit arise. KM acknowledged that the Tenant prefers to contact her support people and not the Landlord.
28. With respect to the damages to the furnace directly caused by the flood on August 13, 2022, I find HW's testimony credible and accept that replacing the furnace was reasonable in the circumstances, as was the claimed costs. Despite the possibility that the furnace could have been repaired for \$500.00 less, it would have been unreasonable for the Landlord to wait indefinitely for the required components considering the time of the year when the furnace was damaged and that the cooler weather was approaching. As such, the Tenant is responsible to compensate the Landlord the costs to replace the furnace in the amount of \$3,373.05.
29. I also find that the bathroom floor in the rental unit was damaged beyond repair as a result of the flood and that a replacement is required. In the email from KM to CA on August 14, 2022, EL wrote:

Perhaps the larger problem is the flooring. As you can see in the attached videos, the flooring has soaked up a lot of water. The flooring was already in very poor shape, but it will be worse now. It seems to me that a new floor in the bathroom is required.

30. KM did not produce documentary evidence to contradict the evidence of the costs on the quote submitted by the Landlord for the repair of the floor. Without evidence to the contrary, I find the amounts requested by the Landlord to be reasonable. As such, the

Tenant is responsible to compensate the Landlord the reasonable estimated costs to replace the bathroom floor in the amount of \$1,390.44.

Section 83 Considerations

31. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and 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.
32. The Landlord sought termination of the tenancy. In the event the tenancy is not terminated, the Landlord requested a conditional order subject to section 78 of the Act.
33. CA testified that the Tenant contacted her on January 31, 2023 again with a clogged and overflowing toilet. This indicates to me that the Tenant is able to contact the Landlord. As such, an order requiring the Tenant to contact Landlord for maintenance issues is ordered.
34. KW was unable to propose a plan for the Tenant to pay back the Landlord the costs of the damages. EI testified that the Tenant's income comes from ODSP and the Tenant does not have much excess funds after her necessary expenses. The Tenant must seek assistance with her utilities costs and utilize the food bank. EL submitted that the Tenant has \$1,000.00 in savings and that amount was a result of her saving for 2 years.
35. KW submits that it would be difficult for the Tenant to relocate due to her health issues. The Tenant's church and support system is a block away the rental unit.
36. I have considered the circumstances of the parties and find that it would not be unfair to postpone the payment date to May 31, 2024. The Landlord is a corporate Landlord and there was no evidence before me that delaying payment will unduly prejudice the Landlord. While it does not appear that the Tenant currently has the funds to pay the Landlord, I find it fair, given the circumstances, to grant the Tenant additional time to locate funds to preserve the tenancy or to find alternative housing.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
2. The Tenant should notify the Landlord immediately of any maintenance issues in the rental unit.
3. The Tenant shall pay to the Landlord \$4,763.49 on or before May 31, 2024.
4. If the Tenant fails to comply with the conditions set out in paragraph 2 or 3 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.
5. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.

6. If the Tenant does not pay the Landlord the full amount owing in paragraph 5 on or before December 10, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 11, 2023 at 7.00% annually on the balance outstanding.

November 29, 2023

Date Issued

Vicky Liu

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.