



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

Citation: Woodhouse v Bowers, 2023 ONLTB 74171

Date: 2023-11-16

File Number:
LTB-L-057137-22

In the matter of: 112, 1455 Trafalgar street
London ON N5W1W8

Between: Cynthia Marie Woodhouse
Jashim Uddin

Landlords

and

Kirk Bowers
Victoria Bowers

Tenants

Cynthia Marie Woodhouse and Jashim Uddin (the 'Landlords') applied for an order to terminate the tenancy and evict Kirk Bowers and Victoria Bowers (the 'Tenants') because:

- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully or negligently caused damage to the premises.

The Landlords applied for an order requiring Kirk Bowers and Victoria Bowers (the 'Tenants') 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 1, 2023.

Only the Landlords attended the hearing.

As of 11:22am, the Tenants were 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.

Determinations:

1. The Landlords served the Tenants with an N5 Notice of Termination alleging wilful or negligent damage of the rental unit. The Landlords also requested the out-of-pocket expenses that the Landlords had to pay in order to repair the damages caused by the Tenants.
2. At the hearing, CW testified that the Tenants vacated the rental unit on October 13, 2023. The Landlords are only seeking compensation for the out-of-pocket expenses that the Landlords had to pay in order to repair the damages caused by the Tenants.
3. Section 89 of the Residential Tenancies Act, 2006, S.O. 2006, c.17 ('Act',) states the following:

A landlord may apply to the Board for an order requiring a tenant to pay reasonable costs that the landlord has incurred or will incur for the repair of or, where repairing is not reasonable, the replacement of 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 the residential complex and the tenant is in possession of the rental unit.

4. Section 88.1 of the *Residential Tenancies Act, 2006* (the 'Act') states the following:

(1) A landlord may apply to the Board for an order requiring a tenant or former tenant to pay costs described in subsection (4) if,

(a) while the tenant or former tenant is or was in possession of the rental unit, the conduct of the tenant or former tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant or former tenant is or was such that it substantially interferes or interfered with,

(i) the reasonable enjoyment of the residential complex for all usual purposes by the landlord, or

(ii) another lawful right, privilege or interest of the landlord

(4) The costs referred to in subsection (1) are reasonable out-of-pocket expenses that the landlord has incurred or will incur as a result of an interference described in clause (1) (a) and do not include costs that the landlord may recover in an application under section 88.2 or 89.

5. The Landlords alleged that they incurred costs because of the Tenants' conduct or because the Tenants caused the following undue damage to the rental unit or residential complex:
 - a. Damaged the stove
 - b. Clogged the drains in the rental unit
 - c. Broke the bedroom window
 - d. Consistently blew breaker fuses
 - e. Refused pest control treatments
 - f. Removed a smoke detector and disposed of it
6. At the hearing, it was determined that the Landlord is no longer seeking compensation for the breaker fuses and the refusal of pest control treatments. The Landlords are seeking \$1,500.75 for the damaged stove, clogged drains, broken window, and smoke detector.

Stove

7. The Landlords testified that the Tenants were continually blowing the fuse that the stove was connected to. They state that the Tenants were doing things to the burners and the stove was continually breaking down until the Landlords were required to replace it. Neither Landlord could provide specific details of what the Tenants were doing to the stove that would cause it to break down or blow the fuse.
8. To be successful on a claim for damages, the Landlords must prove on a balance of probabilities that the damage claimed is "undue". There is no definition in the Act of "undue", but it is fair to say that it means "out of the ordinary" or "not wear and tear caused by ordinary usage." The Landlords must also establish that the Tenants, an occupant or a guest either wilfully or negligently caused the damage.
9. The Landlords provided vague testimony of alleged misuse of the stove but did not provide any specifics or details or evidence to suggest that the Tenants were tampering with or using the stove in a way that would or could cause undue damage to the stove. The Landlords have not established that the Tenants caused the damage, thus, the Landlords' claim for compensation for the alleged damage to the stove is dismissed.

Clogged Drains

10. CW testified that there was rabbit straw and feed, and razor bits found in the drains throughout the rental unit, which caused the sinks to clog. The Landlords were required to hire a drainage company to remove the clogs. The Landlords provided photographs of the clogged drains and the invoice from the drainage company indicating a cost of \$310.75 to clean and clear the kitchen drain. I accept the Landlords' evidence that the Tenants

negligently caused the drains to clog, and I further accept that this was undue damage. I find that \$310.75 represents the reasonable out-of-pocket expense incurred as a result.

Broken Window

11. The Landlords submitted four photographs of the broken bedroom window. The Landlords testified that the Tenants or their guest broke the window. I accept the Landlords' evidence that the Tenants wilfully or negligently damaged the bedroom window. While the Landlords did not see the damage occur, in the absence of a reasonable explanation from the Tenants as to how the window in their unit otherwise broke, I am prepared to draw an inference that it was the Tenants or their guest who did so negligently or wilfully. I also accept that the damage is undue.
12. The Landlords did not provide a written estimate for the cost to repair or replace the damaged window. JU testified that he had a verbal conversation with a contractor and that the repair is in progress. CW testified that they are seeking \$650.00 for the repair and that she based that estimate off of a previous window replacement at an unknown time in the past.
13. As the Landlords did not establish the cost to repair or replace the damaged window, I decline to award the full cost they estimated. In review of the Landlords' evidence, I find it reasonable to order the Tenants to pay compensation to the Landlords for the damage to the window in the amount of \$150.00.

Smoke Detector

14. The Landlords testified that the Tenant was continually removing the smoke detector and that on one occasion, on June 25, 2022, the Landlords became aware that the Tenants had removed the smoke detector and disposed of it. The Landlords provided the Tenants with a replacement smoke detector, at the Landlords' cost.
15. JU testified that they keep a surplus of smoke detectors in cost and purchase them in bulk, at \$45.00 each. I accept the Landlords' evidence that the Tenants removed and disposed of the smoke detector in the rental unit and find that \$45.00 represents the reasonable out-of-pocket expense incurred as a result of the Tenants' wilfully or negligently caused undue damage.

It is ordered that:

1. The Landlords' claims of damages and out-of-pocket expenses for the stove is dismissed.
2. The Tenants shall pay to the Landlords \$150.00, which represents the reasonable cost of replacing the broken window.

3. The Tenants shall also pay to the Landlords \$355.75, which represents the reasonable out-of-pocket expenses incurred for unclogging the drains and replacing the smoke detector.
4. The Tenants shall also pay to the Landlords \$186.00 for the cost of filing the application.
5. The total amount the Tenants owe the Landlords is \$691.75.
6. If the Tenants do not pay the Landlords the full amount owing on or before November 27, 2023, the Tenants will start to owe interest. This will be simple interest calculated from November 28, 2023 at 7.00% annually on the balance outstanding.

November 16, 2023

Date Issued

Candace Aboussafy

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.