



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

Citation: ARCHER v PARSONS-GRAVEL, 2023 ONLTB 73483

Date: 2023-11-14 **File Number:**
LTB-L-048070-22-RV

In the matter of: MAIN FLOOR, 123 POLLOCK AVENUE
KIRKLAND LAKE ON P2N1Z1

Between: MELISA ARCHER Landlord

And

BRIANA PARSONS-GRAVEL Tenant

Review Order

MELISA ARCHER (the 'Landlord') applied for an order to terminate the tenancy and evict BRIANA PARSONS-GRAVEL (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully caused undue damage to the premises.

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

This application was resolved by order LTB-L-048070-22 issued on January 27, 2023. None of the parties attended the hearing of January 24, 2023.

On February 24, 2023 the Landlord requested a review of the order alleging she was not reasonably able to participate in the hearing due to technical difficulties.

On February 27, 2023 interim order LTB-L-048070-22-RV-IN was issued, staying the order issued on February 24, 2023.

This application was heard in by videoconference on March 20, 2023 and was adjourned to April 14, 2023 for continuation.

The Landlord, the Tenant's legal representative Therese Menard and the Tenant attended the hearing.



Determinations:

Landlord's Request for Review

1. The Landlord testified that on the day of the hearing, she was present but due to technical issues, she was in a holding pattern in Zoom and not able to join the hearing. She proceeded to have four other people call into the Board to advise of her inability to connect and only connected at 12:30 p.m. at which point she was advised that she had missed the hearing as the matter was scheduled in the morning docket.
2. Given the Landlord's intentions to participate but technical issues prevented her from doing so, I find it reasonable to grant the Landlord's request to review.
3. The Landlord's request to review the order on the grounds that she was not reasonably able to participate in the hearing held on January 24, 2023 is granted.

New Hearing of the Landlord's L2 Application

4. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy or the claim for compensation in the application. Therefore, the application is dismissed.
5. The Tenant was in possession of the rental unit on the date the application was filed.
6. The rental unit is duplex, the Tenant occupies the main floor three-bedroom unit with her four children aged 2, 4, 7, 10 and more recently her boyfriend. She has resided in the rental unit for 5 years.

N7 Notice of Termination

7. On August 11, 2022, the Landlord gave the Tenant an N7 notice of termination deemed served on August 11, 2022. The notice of termination contains the following allegations:
 - **June 21, 2022:** Your child started a fire on a mattress causing fire damage in back bedroom and kitchen. The fire department says that the fire barrier has been broken from flame. This is also a hazard to the apartment above. Stopped paying rent.
 - **July 9, 2022:** Fire Safety walk through with fire department revealed extensive vandalism. Many walls with punch and kick damaged drywall, floors destroyed, all doors damaged or destroyed. Excessive garbage piled in front bedroom, outside, also in MY basement.



- **August 10, 2022:** Follow up Fire Safety walk. No improvement made. pictures included. Tenant notified to remove belongings from MY basement, new locks put on. Tenant did not remove belongings is filled length, height and width with garbage, clothes, broken toys.

Serious Impairment of Safety/ Landlord's evidence

8. For the reasons that follow, the Landlord has not proven that the Tenant or another occupant of the rental unit has seriously impaired the safety of other tenants by her child setting the fire in the bedroom on June 21, 2022.
9. The Landlord submitted that as a result of the June 21, 2022 a walk through was conducted on July 9, 2022 which revealed fire damage and extensive vandalism to the interior of the rental unit. Specifically, that there was a broken window, holes in the ceiling and walls and missing doors.
10. She submits that she was advised that a child had caused the fire in one of the bedrooms however felt that it was unlikely that a three-year-old would be able to start such fire. Secondly, that since the Tenant moved in and has control of the thermostat settings in her rental unit, that she has been setting the heat so high that her costs have risen to \$2,000.00 and that through what is described as excessive heat use, has caused damaged to the flooring.
11. As evidenced in the Board's record, the fire department investigated and issued a fire watch report for a four (4) hour period post to monitor the possibility of embers continuing to burn. There was no report of an active or residual fire.
12. The Landlord submitted that the fire department will impose a fine of \$20,000.00 for noncompliance revealed through the walk-through and as described above.
13. When questioned about the \$20,000.00 impending fine, the Landlord submitted that she was verbally warned and presumed it would be impending. As of the hearing date, there was no evidence to substantiate the alleged claim.
14. The Landlord did not file a loss through her property insurance and the Tenant did not have her own coverage in place. The Landlord said that she provided the Tenant with drywall, mud and tape to fix any damage to walls. This is the only supplies she provide to the Tenant and instructed her to make the necessary repairs.
15. She submits that she obtained a quote for \$20,000.00 to repair the unit as arising from the claim of vandalism and fire damage, alleging that the fire penetrated the wall to the basement. Based on increase in pricing she believes this cost to be now closer to \$30,000.00.



Tenant's evidence

16. The Tenant's legal representative submitted that the Landlord filed the wrong application, that there was no willful damage to the rental unit and that the single event of the minor fire did not impair the safety of others.
17. The Tenant said that she was attending to her youngest child, a toddler, when her then three-year-old started a fire in the back bedroom by igniting a garbage bag with a lighter. She put the fire out promptly by pouring water on it, the room sustaining minor damage to the floor and to the bed mattress. Once the fire was out, she then contacted the Landlord to notify the fire department.
18. Once the fire department attended and put the property on a four hour watch, the Tenant was advised to vacate the rental unit for three (3) days, fix the holes in the walls, clean the soot off the walls and repaint.
19. The Tenant said that the Landlord's allegations of a kitchen fire, or damage to the basement wall are false as the fire was limited to the back bedroom and that she has made the necessary repairs as prescribed by the fire inspector.

Undue Damage

20. The Landlord has not proven that the Tenant or an occupant of the rental unit or a person permitted in the residential complex by the Tenant has wilfully caused undue damage to the rental unit by causing holes in the walls, removing doors and damaging a window.
21. The Landlord evidenced photos of the rental unit allegedly taken at the time it was advertised for rent. The Tenant alleged that the photos were taken from an advertising of a past period as when she moved in, there was residual furniture left behind by the previous tenant and that the photos did not reflect this. The video of the walk-through inspection on July 9, 2022 showed a couple of holes in the wall, the floors appeared to be have lifted, or peeled, and there are piles of what appear as garbage, clothing and toys all over the floors. The basement is filled with clothing, toys and other belongings.
22. The video showing the walk-through undisputedly demonstrates a rental unit that can be said to be in need of a clean up and organization. The fire inspector is recorded saying that there is help for these types of issues and that he would connect the Tenant with the appropriate resources in the community.
23. The Tenant said that the broken window as alleged by the Landlord was pre-existing at the time of move in, that this is a non-functioning window which the Landlord told her to board up as a measure to address it.
24. In addressing the allegations of holes in the ceiling, the Tenant submitted that those too were pre-existing and that when she was re-painting the unit that tissue fell out of the ceiling holes, thereby exposing the holes.



25. In addressing the allegation of missing doors, the Tenant said that she had removed one door to her daughter's bedroom as the hinges were broken, that the mounting brackets could no longer hold the door in place and that it was impossible to secure them due to the frame. She removed the door as it posed a danger of falling off.
26. As submitted by the Landlord, the Tenant confirmed that she was provided with drywall, mud and tape to fix any damage to walls. She repaired wiped down the walls, patched up the holes and repainted the rental unit. The photos submitted into evidence were taken some time in January 2023 and demonstrate that the repairs were completed, and the rental unit appeared to be cleaned and organized.

Reasons and Analysis:

27. Subsection 66(1) of the *Residential Tenancies Act, 2006* (the 'Act') sets out the necessary elements that a landlord must establish to prove for the Board to terminate the tenancy in response to a serious impairment of safety:

66. (1) A landlord may give a tenant notice of termination of the tenancy if,
 - (a) an act or omission of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant seriously impairs or has seriously impaired the safety of any person; and
 - (b) the act or omission occurs in the residential complex.

28. The impairment to safety must be serious and consequential, not trivial. Given the serious consequences of a successful application under this section, including short notice, immediate application, no opportunity to void the notice and expedited enforcement by the Sheriff, this provision is intended to be reserved for the most serious of situations. Less serious conduct may be addressed through other provisions of the Act. As the Board noted in *Re File No. TSL-12167-11*:

"In order to be successful on this ground, the Landlord must establish that the effect of the occupant's actions threatens the well being or physical integrity of another person to such a degree that termination of the tenancy is reasonable in order to ensure the safety of others. In other words, have the occupant's actions put someone at serious risk of physical harm? Not every risk of physical harm to another will meet the test, as the impairment of safety must be serious."

29. The Landlord's position in this matter, may appear exaggerated. The fire did not cause serious damage to the unit and what smoke damage there was, was addressed by the Tenant. The Tenant washed the walls, patched up holes that were not related to the fire and repainted the unit. While the bedroom floor had residual burn marks, those appear to



be on the surface and the Tenant submitted that those could be removed by sanding and revarnishing. The Landlord disagreed.

30. Given that the fire was minor in nature and that it was started unintentionally as resulting from the actions of a three (3) year old toddler, I find that there is insufficient evidence to meet the test of “serious impairment of safety”. As a result, this portion of the Landlord’s application shall be dismissed.
31. While the Landlord’s application includes a claim for damages, the allegations of undue damage to the premises were not entirely fire related. The rental unit at the post fire inspection undeniably demonstrated much disarray, garbage on the floors, dirty walls, a couple of holes and floors that appear to be lifting in parts. The damage to the floors could be a result of wear and tear, and the Tenant referred to past water penetration.
32. The Tenant has complied with making the necessary repairs to the rental unit, the Landlord incurring minimal cost except for providing her with some drywall, mud and tape to address damage to the walls. While the Landlord submits that the rental unit may cost upwards of \$30,000.00 to repair, this can not be substantiated through the alleged damage and supporting evidence. The repairs as completed by the Tenant have addressed majority of the issues as noted in the N7 notice.
33. While the Landlord submitted that she was frustrated with the non-payment of rent, excessive heating bills, allegations of resultant heat damage to the upstairs unit and contemplated sale of the rental unit, I find that there is insufficient evidence to meet the test of causing willful undue damage to the rental unit. As a result, the Landlord’s application shall be dismissed.

It is ordered that:

1. The request to review order LTB-L-048070-22 issued on January 27, 2023 is granted.
2. The Landlord’s L2 application is dismissed.

November 14, 2023

Date Issued

Alicia Johnson
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.