



**Order under Section 69 / 88.2 / 89
Residential Tenancies Act, 2006**

Citation: TRAEXTRA CORPORATION LTD. v Mcdonald, 2023 ONLTB 74178

Date: 2023-11-09

File Number:
LTB-L-060188-22

In the matter of: 4 BOVILLE CRT
ORO-MEDONTE ON L0L2L0

Between: TRAEXTRA CORPORATION LTD. Landlord

And

Melissa Mcdonald Tenants
Jason John Mcdonald

TRAEXTRA CORPORATION LTD. (the 'Landlord') applied for an order to terminate the tenancy and evict Melissa Mcdonald and Jason John Mcdonald (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 Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

TRAEXTRA CORPORATION LTD. (the 'Landlord') also applied for an order requiring Melissa Mcdonald and Jason John Mcdonald (the 'Tenants') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenants' failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

TRAEXTRA CORPORATION LTD. (the 'Landlord') also applied for an order requiring Melissa Mcdonald and Jason John Mcdonald (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 Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex.

This application was heard by videoconference on November 1, 2023. Only the Landlord's legal agent, V. Hohots (VH), attended the hearing.

As of 10:36 a.m., 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.

Preliminary Issue:

1. The Landlord requested to amend the application to include additional claims for damages to the rental unit. VH submitted that at the time the application was filed, they had not yet seen the extent of the damage as the Tenants were still occupying the rental unit. However, at a previous hearing, the Landlord advised the Tenants that the damage was going to cost much more than initially plead.
2. I granted the Landlord's amendment request pursuant to Rule 15.3 of the Board's Rules of Procedure. Based on the Landlord's uncontested evidence, the Tenants were advised about the increased damage claim. Moreover, the Tenants did not attend to contest the amendment request and therefore, I see no prejudice to the Tenants in granting the request.

Determinations:

3. As explained below, the Landlord has proven on a balance of probabilities the claim for compensation in the application. Therefore, the Tenant shall pay to the Landlord \$35,000.00.
4. The Tenants were in possession of the rental unit on the date the application was filed.
5. The Tenants vacated the rental unit on November 10, 2022.

N5 Notice of Termination

Willful or Negligent Damage

6. The Tenants vacated the rental unit on November 10, 2022. As the Tenants have vacated the rental unit, there is no need to consider the merits of the Landlord's application to evict the Tenants. The Landlord's application for eviction is moot.

Compensation for unpaid utilities

7. The Landlord's legal agent testified that the Tenants failed to pay heat, electricity and water costs that they were required to pay under the terms of the tenancy agreement. Submitted into evidence was a copy of the Tenants' water profile.
8. I am satisfied that the Landlord has incurred reasonable out-of-pocket expenses of \$9,706.65 as a result of the Tenants' failure to pay heat, electricity and water costs. This amount represents unpaid gas from August 20, 2019 to October 1, 2022 (\$987.83), unpaid electricity from November 1, 2021 to October 1, 2022 (\$160.60), and unpaid water and sewage from April 20, 2019 to September 16, 2022 (\$8,558.22).

Compensation for damages

9. The Tenants, another occupant of the rental unit or a person whom the Tenants permitted in the residential complex wilfully or negligently caused undue damage to the rental unit or residential complex.
10. VH testified that the tenancy began in 2019. The Tenants resided in a brand-new unit that had not yet been occupied. The Tenants caused a significant amount of damage to the rental unit. Submitted into evidence were photographs of scratched and dented walls, marker drawings on the walls, severely stained carpet from dog excrement, spills and marker, damaged window frames, rooms painted in bright blue and green, several scratches in the interior of the closet, holes in the door frame, severely scratched front door, torn and broken window frame for the patio door, severely scratched hardwood floor, and broken netting for the window frame. Based on the photographs, I am satisfied that the Tenants wilfully or negligently caused the damage, and the damage was not from regular wear and tear.
11. Also submitted into evidence was a quote from Lemman Construction. VH confirmed that the quote only identified the cost for fixing the above-noted damage and did not include any improvements to the rental unit. The amount in the quote was \$26,733.54. Based on the uncontested evidence of the Landlord, I find that the cost is reasonable in the circumstances.
12. The Landlord's claim for compensation exceeds the Board's monetary jurisdiction of \$35,000.00. The Landlord indicated a desire to proceed with the hearing of the application and voluntarily waived the portion of the claim that exceeds the Board's monetary jurisdiction.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated as of November 10, 2022, when the Tenants vacated the rental unit.
2. The Tenants shall pay to the Landlord \$8,266.46, which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the unpaid utility costs, less the amount that exceeds the Board's monetary jurisdiction.

3. The Tenants shall pay to the Landlord \$26,733.54, which represents the reasonable costs of repairing the damage to the rental unit.
4. The total amount the Tenants owes the Landlord is \$35,000.00.
5. If the Tenants does not pay the Landlord the full amount owing on or before November 20, 2023, the Tenants will start to owe interest. This will be simple interest calculated from November 21, 2023 at 7.00% annually on the balance outstanding.

November 9, 2023

Date Issued

Camille Tancioco

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.