



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

Citation: RIDGEFORD CHARITABLE FOUNDATION v Andrew, 2023 ONLTB 65721
Date: 2023-09-26 **File Number:** LTB-L-031000-22

In the matter of: 611, 23 THUNDER GROVE SCARBOROUGH
ON M1V0G6

Between: RIDGEFORD CHARITABLE FOUNDATION Landlord

And

Martin Andrew Tenants
Mary William

RIDGEFORD CHARITABLE FOUNDATION (the 'Landlord') applied for an order to terminate the tenancy and evict Martin Andrew and Mary William (the 'Tenants') 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 Tenants remained in the unit after the termination date.

RIDGEFORD CHARITABLE FOUNDATION (the 'Landlord') also applied for an order requiring Martin Andrew and Mary William (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 June 1, 2023.

The Landlord's agents Debra Zalter, Sabita Ramdarran, the Landlord's legal representative Debbesha Morris, the Landlord's witnesses (superintendents) Jerzy Kaledek, Shane Obornik and the first named Tenant, Martin Andrew attended the hearing.

Determinations:

1. 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.
2. The Tenants were in possession of the rental unit on the date the application was filed.
3. The residential complex is a multi unit apartment, the Tenants reside in one of only 12 accessible units. The building is serviced by an elevator.
4. The application is based on the Landlord's allegation that the Tenants wilfully or negligently caused damage to the residential complex elevator that resulted in the dispatch of Emergency Medical Services (EMS) on their move-in date of October 16, 2021. Also, that their actions have substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or other tenants of the residential complex.
5. The primary issue to be determined in this case is whether the Landlord has proven their allegation that the Tenants have wilfully or negligently caused damage to the complex elevator.
6. The Landlord served the Tenants the N5 notice on May 18, 2022. This notice was served pursuant to section 62 for allegation of negligent or wilful damage and section 64 for allegations of substantial interference that relates to the impact on Landlord's lawful right, privilege or interest. The N5 outlined that the Tenants pay the Landlord \$2,013.21 for the costs the Landlord incurred for the dispatched Emergency Medical Services (EMS) to void or correct the problem.
7. The voiding period for the N5 was from May 19, 2022 to May 25, 2022, the Tenants did not void the notice in that they did not pay the Landlord the amount as outlined.
8. The standard of proof in proceedings before this Board is proof on a balance of probabilities. By that standard, the party bearing the burden, in this case the Landlord must prove that, more likely than not, their assertions are true.
9. It was the Landlord's evidence that on the day the Tenants were moving in they reserved the elevator for a time slot between 10:00 a.m. and 11:00 a.m., that they overloaded the elevator and as a result the elevator stopped working. That the first named Tenant called 911 in a non-emergency situation and because of the Tenant's actions, the Landlord incurred costs as resulting from EMS being dispatched.
10. The Tenant submitted that the elevator stopped working in between floors and that his grandson and a friend were stuck. The Tenant said that he called two superintendents, only one was on duty, calling multiple times in a span of 15 minutes. When he could not reach either superintendent, he called 911. He felt this he had no other option, as his grandson has pre-existing medical issues, was sweating, experiencing anxiety and asking "when can we get out" repetitively. He was responding to his grandson's distress.

11. The Tenant does not feel that he should be responsible for the elevator not working properly, that the elevator has a maximum weight capacity limit of 2500 pounds, and although is in a newly constructed building may have deficiencies. Additionally, that the furniture along with the two men in the elevator did not nearly reach the weight capacity limit of the elevator.
12. On cross-examination, the content of the elevator was said to be two chairs, a loveseat, a night table, some boxes and two men. It was estimated that the material content may have accounted for about 400 pounds, and that the content was bulky but not heavy.
13. It was undisputed that the elevator repair technician arrived on the premises within an hour, performed some sort of reset and the elevator was returned to an operative state.
14. The Landlord submitted that the Tenants acted prematurely and unnecessarily when choosing to escalate to the level of calling the EMS, this having the consequence of service charges being passed on to the Landlord.
15. Section 83(2) of the Act requires the Board to consider all the circumstances in an application before granting an order terminating the tenancy.
16. Based on the testimonies given by all parties, I was not satisfied, on a balance of probabilities, that the Landlord met their burden of proof that the Tenants, or someone the Tenants permitted in the residential complex has wilfully or negligently caused damage to the elevator servicing the residential complex. Or that, 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.
17. While it was uncontested that elevator was full, there was no direct evidence adduced to support the finding that the weight of the elevator contents was the cause of the elevator stopping between floors. Additionally, even though an elevator repair technician attended at the residential complex and put the elevator back into operation, there was no report rendered to support the allegation that the repair call resulted from the Tenants actions.
18. In review of the day's events, noting that this is the Tenants move-in day into the complex, it is not unreasonable noting the type of situation as arising, that after attempting to reach the Landlord's superintendents that the next level of assistance may be calling 911. It can be said that when placing such calls, it is the 911 dispatcher who assesses the situation before services are dispatched. I do not agree with the Landlord's submissions that the Tenants acted prematurely or unnecessarily as at the time the 911 call was placed there was no indication how long the elevator was going to be in the suspended state between two floors and the state of emergency centered around the Tenants grandson who was becoming increasingly anxious from being in a confined space.

19. After having considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), I find that it would not be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
20. The Landlord's application to terminate the tenancy and evict the Tenant is denied.
21. The order contains all the reasons for the decision within the order. No other reasons will be issued.

It is ordered that:

1. The Landlord's application is dismissed.

September 26, 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.