



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

Citation: 2362418 Ontario Inc. v Mannella, 2023 ONLTB 61950

Date: 2023-09-14

File Number: LTB-L-045917-22

In the matter of: 2, 3049 LAKE SHORE BLVD W
ETOBICOKE ON M8V1K5

Between: 2362418 Ontario Inc. Landlord

And

Raffaele Anthony Mannella Tenant

2362418 Ontario Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Raffaele Anthony Mannella (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes. **(L1 Application)**

The Landlord also applied for an order to terminate the tenancy and evict 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 and the Tenant has been persistently late in paying the Tenant's rent. The Landlord 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. **(L2 Application)**

This application was heard by videoconference on August 24, 2023.

Only the Landlord's legal representative Silvat Moaziz Syed attended the hearing.

As of 10:04a.m., the Tenant was 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.

L1 Application

1. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
2. The Tenant was in possession of the rental unit on the date the application was filed.

3. The Tenant vacated the rental unit on October 16, 2022. Rent arrears are calculated up to the date the Tenant vacated the unit.
4. The lawful rent is \$1,046.10. It was due on the 1st day of each month.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to October 16, 2022, are \$4,734.64.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$990.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.
9. Interest on the rent deposit, in the amount of \$83.34 is owing to the Tenant for the period from November 11, 2016, to October 16, 2022.

L2 Application

10. The Tenant vacated the rental unit October 16, 2022. The Tenant was in possession of the rental unit at the time the application was filed with the Board.
11. The Landlord seeks only an order for the reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property.
12. The governing provision for costs in relation to damage to property is 89 of the *Residential Tenancies Act, 2006* ('the Act') which reads:

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.

[Emphasis Added]

13. As explained below, I am satisfied on balance of probabilities the Tenant, another occupant of the rental unit or a person whom the Tenant permitted in the residential complex wilfully or negligently caused undue damage to the rental unit or residential complex.
14. The Landlord's legal representative argued that on June 28, 2022, the Landlord discovered damages to the washroom at the rental unit. She filed photographic evidence with the Board in support of the Landlord's claim of the damages to the washroom. These photographs clearly show a large hole made to the front door of the washroom and one of the walls inside the washroom covered in plaster. The Landlord's legal representative claimed that the plaster on the washroom wall was used to purportedly cover damage to the wall.

15. The Landlord's legal representative also argued that the damage to the washroom door and the plaster inside the washroom wall was not there prior to the Tenant moving into the rental unit and that the washroom inside the rental unit was used exclusively by the Tenant. The Tenant was made aware of the damages as a non voidable N5 Notice of Termination was served to the Tenant and he had agreed to repair these damages but failed to do so.
16. The Landlord seeks \$1,344.70 in costs to repair the damages to the washroom in the rental unit. The claim for costs was supported by a quote obtained from a contractor dated July 5, 2022.
17. Based on the evidence adduced at the hearing, I find that on a balance of probabilities, the Tenant wilfully or negligently caused undue damage to the washroom door and the washroom wall in the residential unit. The damages were committed entirely within the rental unit. Because of this, and in the absence of a reasonable explanation by the Tenant as to how it may have been committed by a person other than the Tenant or their guest, I draw the inference that the Tenant or their guest committed the damage. Based on the amount required to fix the issue I find that the damage was undue. The photographs show a hole made to the front door of the washroom and plaster applied on the wall inside the washroom. These damages are not the result of normal wear and tear and could only have occurred through either wilful or negligent actions of the Tenant or their guests.
18. Accordingly, I will award the Landlord reasonable out-of-pocket costs which the Landlord will incur to repair undue damage to property in the rental unit.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of October 16, 2022, the date the Tenant moved out of the rental unit.
2. The Tenant shall pay to the Landlord \$3,847.30. This amount includes rent arrears owing up to the date the Tenant moved out of the rental unit and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
3. The Tenant shall also pay to the Landlord \$1,344.70, which represents the out-of-pocket reasonable costs of repairing the damaged property.
4. The total amount the Tenant shall pay to the Landlord is \$5,192.00
5. If the Tenant does not pay the Landlord the total amount owing on or before September 25, 2023, the Tenant will start to owe interest. This will be simple interest calculated from September 26, 2023, at 6.00% annually on the balance outstanding.

September 14, 2023

Date Issued

Inderdeep Padma

Member, Landlord and Tenant Board

15 Grosvenor St, 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.

**Schedule 1
SUMMARY OF CALCULATIONS**

A. Amount the Tenant must pay as the tenancy is terminated.

Rent Owing to Move Out Date	\$4,734.64
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$990.00
Less the amount of the interest on the last month's rent deposit	- \$83.34
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$3,847.30

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