



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

Citation: Johnson v Murphy, 2023 ONLTB 60201

Date: 2023-09-11

File Number: LTB-L-057851-22

In the matter of: 3102, 31 Sudbury St. Toronto, Ontario
M6J3W6

Between: Kim Johnson and Nzingha Johnson Landlords

And

Danielle Murphy Former Tenant

Kim Johnson and Nzingha Johnson (the 'Landlords') applied for an order requiring Danielle Murphy (the 'Former Tenant') to pay the Landlords reasonable out-of-pocket costs that the Landlords have incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Former Tenant, another occupant of the rental unit or someone the Former Tenant permitted in the residential complex.

This application was heard by videoconference on July 13, 2023. The Landlord Nzingha Johnson attended on behalf of both Landlords. The Tenant attended the hearing and spoke with duty counsel prior to the hearing.

Request to reschedule

On June 22, 2023, the Landlords filed a request to reschedule the hearing which was denied by the Board on June 23, 2023 because it was not on consent. At the hearing, the Landlord, Nzingha Johnson further requested to reschedule the hearing and stated that she arrived in Montreal in June 2023 and she is caring for an elderly person that has health issues. The Tenant did not consent to the reschedule request and stated that she took the day off work to attend the hearing. The Landlords request to reschedule was denied. The request is not on consent pursuant to Rule 21 of the Board's Rules of Procedure and the Landlords did not provide any information regarding any steps the Landlords attempted to take to find alternate arrangements for care for the elderly person. The Board's records confirm the Notice of Hearing was emailed to the Landlords on May 25, 2023.

Request to combine applications

At the hearing, the Tenant requested to combine the Landlords' L10 application with the Tenant's T1 application for a Rebate of Money the Landlord Owes. The Tenant stated that the Landlords have not returned the Tenant's pet deposit after the Tenant moved out of the rental unit. The Tenant further stated that the evidence will be overlapping on both applications. The Landlords did not consent to the request to combine the applications and stated the pet deposit has been returned to the Tenant. The request to combine the applications was denied at the hearing. I am not persuaded that the issues are overlapping, or that the Tenant will be relying on the same evidence.

Determinations:

1. As explained below, the Landlords have proven on a balance of probabilities the allegations contained in the application as it relates to damage to the laminate floors inside the rental unit. Therefore, the Former Tenant must pay the Landlords \$578.00 by September 22, 2023.
2. The Landlords have not proven on a balance of probabilities the allegations contained in the application relating to damage to the bathtub (\$960.50), toilet seat (\$128.80), maintenance/cleanliness of the rental unit (\$355.95), and the cost to replace the locks (\$20.00). Therefore, the Landlords are not entitled to these claimed costs.
3. The Landlords incurred \$201.00 for the application filing fee and the Landlords are entitled to this cost.
4. It is undisputed that the Former Tenant vacated the rental unit on June 13, 2022.
5. The rental unit is a two-bedroom condominium.

Compensation for damage

6. The Former Tenant, another occupant of the rental unit or a person whom the Former Tenant permitted in the residential complex wilfully or negligently caused undue damage to the rental unit or residential complex as it relates to the laminate floors in the living room and second bedroom. The Landlords have not proven that the Former Tenant, another occupant of the rental unit or a person whom the Former Tenant permitted in the residential complex wilfully or negligently caused undue damage to the bathroom tub and toilet seat. I do not find the Tenant was negligent and caused damage as it relates to the maintenance/cleaning of the rental unit when the Tenant vacated. Further reasons are provided below.

Damage to laminate floors

7. The Landlords will incur reasonable costs of \$578.00 to repair the damage to the laminate flooring in the living and the second bedroom which includes of scratches and gouges in the laminate flooring. On a balance of probabilities, I find that these marks on the laminate floors were caused by the Former Tenant's dog during her tenancy. Therefore, the Landlord is entitled to \$578.00 for the cost to replace the laminate flooring damaged by the Former Tenant's dog during the tenancy.
8. I find the Landlords evidence to be persuasive regarding the damage to the laminate flooring in the living room and second bedroom. I accept the Landlord's evidence that the laminate flooring inside the rental unit was installed in March 2021 and was brand new prior to the Former Tenant moving in. This is supported by the photographs produced by the Landlords, taken by the Landlords' real estate listing agent in May/June 2021. The rental unit appears very clean and the flooring and the finishes inside the rental unit appear to be new. The Landlords produced eleven close up photographs of the laminate floors in the living room and second bedroom which were taken after the Former Tenant vacated the rental unit. The Landlords states that there are scratches and gauges in the flooring which is from the Former Tenant's dog. In eight of the eleven photographs, scratches and gouge marks are clearly visible in the laminate floors. The Landlord produced a video of the Former Tenant's dog which appears to be a medium breed black dog and the gouge marks look like nail marks from a dog. The Landlords states that she obtained a quote to repair the damage to the laminate floors in July 2023 and that the flooring has been ordered, but not yet replaced. The Landlords state that it will cost \$350.00 to replace the floor slabs and \$228.00 to replace the palette. I accept this amount is reasonable to replace the damage laminate flooring in both the living room and second bedroom.
9. The Former Tenant produced four videos taken at 4:08 pm on June 13, 2022 which show the laminate floors throughout the rental unit. One of the videos specifically shows the flooring in the living room and the second bedroom. The problem with the Former Tenant's evidence is that the videos taken are not close up of the flooring and the videos also scan over the flooring area very quickly. As a result, it is difficult to clearly see the marks to the laminate floors. Therefore, I afford little weight to the video showing the laminate flooring. The Former Tenant also states that many people walked through and viewed the unit prior to the Former Tenant moving in and that the Landlords did not provide evidence of what the floors looked like after the unit was viewed and prior to the Former Tenant moving in. I do not accept it is plausible that the gouges and scratches in the laminate flooring were the result of people viewing the unit prior to the Former Tenant moving in because the gouges in the laminate flooring were deep and the scratches were long.

Damage to bathtub and toilet seat

10. The Landlords are not entitled to \$960.50 for the incurred costs to refinish the bathtub. The Landlords have not proven that the Former Tenant, another occupant of the rental unit or a person whom the Former Tenant permitted in the residential complex wilfully or negligently caused undue damage to the bathtub of the toilet seat in the rental unit.
11. The Landlords incurred \$960.50 on June 29, 2023 as supported by an invoice for bathtub repairs and refinishing. The Landlords submit that the bathtub had 3 chips in it which were not there prior to the Former Tenant moving in. The Landlords further submit that the Tenant used yellow caulking around the bathtub and the bathtub is white. The Landlords produced photographs of the bathtub inside the rental unit prior to the Former Tenant moving in which were included with photographs taken by the real estate listing agent in May/June 2021. The photographs of the bathtub are not close-up photographs and no chip in the bathtub can be seen as the shower curtain is covering the corner of the bathtub where the Landlords state one of the chips are. The Landlords produced photographs of the bathtub which were taken during an inspection of the rental unit on January 14, 2022 and a black chip can be seen in the corner at the top of the bathtub. From the Landlords photographs produced, no other chips in the bathtub were visible. I do not afford much weight to the Landlords' evidence that this chip existed prior to the Former Tenant moving in as the chip is not visible in the real estate listing photographs from May/June 2021. The Landlords produced another photograph taken after the Former Tenant vacated which shows brownish discoloration in a small corner of the caulking at the top corner of the tub and the other caulking surround the bathtub is not a bright white as it appears in the May/June 2021 real estate listing pictures. I find this discolouration is minor and is not unreasonable. Further, I accept the Tenant's evidence that that the chips in the bathtub existed prior to her moving in and she stated that she did not apply caulking around the bathtub.
12. For the above reasons, I do not find the Landlords have established that the Former Tenant caused undue damage to the bathtub.
13. The Landlords stated that the toilet seat in the bathroom had a broken soft seat and that the Landlords replaced it for a cost of \$128.80. The Landlords are not entitled to their claimed costs in the amount of \$128.80 for replacing the toilet seat because I do not find the Landlords have established that the toilet seat was broken by the Former Tenant during the tenancy as no pictures of a broken toilet seat were produced.

Rental unit was not maintained/cleaned when Tenant vacated the rental unit

14. The Landlords are not entitled to \$355.95 for the costs incurred by the Landlords to clean the rental unit. I do not find the Landlords have proven that this incurred cost is reasonable. I find the condition of the rental unit was both clean and tidy when the Former Tenant vacated. I find this is supported by the video evidence (four videos) produced by the

Former Tenant taken at 4:08 pm on June 13, 2022. The videos also show the fridge is very clean on both the inside and outside, the top of the stove, kitchen countertops, and the floors throughout the rental unit appear to be very clean. I find the Former Tenant complied with the requirement set out within the tenancy agreement and paid to have the rental unit professionally cleaned prior to vacating the rental unit.

15. The Landlords state a walkthrough was done by both Landlords at 4:50 pm on June 13, 2022 which the Landlord state was 5 minutes after the Tenant returned the keys to the Landlords. The Former Tenant declined to do a walkthrough with the Landlords. The Landlords state the following was found within the rental unit during the inspection:
- Salt on the tile floor in front foyer and inside the closet grooves by the front door;
 - Dog hair on the living room floors and inside the laundry room. Human hair inside the washing machine and dryer and blue soap on the side of washing machine and on the floor;
 - Food debris inside the dishwasher and on the hood range fan;
 - Grease on top and inside the stove;
 - Two kitchen cabinets has sticky residue inside and a grease stain;
 - One cabinet in kitchen had three keys and lightbulbs left inside and items left in bathroom drawer;
 - Sticky droplets on hallway wall;
 - Urine stain on toilet inside bathroom;
 - There was garbage inside of the rental unit and none of the appliances were cleaned; and
 - Two burnt out lightbulbs in the bathroom.
16. The Landlords state that on June 16, 2022, the Landlords hired a professional cleaning company to perform a deep cleaning of the rental unit which is supported by an invoice produced by the Landlords in the amount of \$355.95. The Landlords state that as per the tenancy agreement, the Former Tenant is responsible for paying for the rental unit to be professionally cleaned. The Landlords also state that the tenancy agreement stipulates that the Former Tenant is responsible for replacing lightbulbs and that the Landlords gave the Former Tenant specific instructions to replace the lightbulbs when they burnt out.
17. The Former Tenant states she paid for the rental unit to be professionally cleaned on June 13, 2022 and produced an invoice in the amount of \$350.30. The Landlords dispute the cleaning service that the Tenant paid for and states it was not a deep clean service. The Former Tenant concedes there were burnt out light bulbs when she moved out of the rental unit. She states she purchased new lightbulbs from Canadian Tire which she left inside the kitchen drawer which was not disputed by the Landlords.
18. I prefer the video evidence produced by the Former Tenant over the photographs produced by the Landlords taken during the walkthrough of the rental unit on June 13, 2022. This is because I find the photographs produced by the Landlords do not support that the Former

Tenant left the unit in an unreasonable state of cleanliness, or untidiness. The Landlord's photograph of the dishwasher shows the dishwasher is clean with a minimal amount of debris on the screen inside the dishwasher, which does not appear to be food. Another photograph produced by the Landlords shows a few brown droplets on the wall which appear to be on the surface of the paint. Other photographs shows some holes in the walls where there appears to have been something previously hanging on the wall, some minor marks in a plastic frame surrounding a window, two burnt out lightbulbs in the bathroom, a small amount of dust/debris inside a cupboard where there is a water pipe, a few items left inside of a drawer, and the photographs of the bathroom do not show any dirt, hair, or debris. The Landlords state they are not seeking any costs from the Former Tenant for repainting the walls or repairs to the holes in the walls.

19. Based on the above, the Landlords are not entitled to their claimed cost of \$355.95 for the deep cleaning of the rental unit.
20. The Landlords are not entitled to their claimed costs of \$20.00 for the cost to replace the locks as I do not find the Landlords have proven this cost to be reasonable. The Landlords claim \$20.00 for the cost of changing the locks because the Former Tenant left her vehicle parked at the rental unit an extra day until June 14, 2022. The Former Tenant states that she removed her vehicle from the parking spot at the condominium at 6:13 pm on June 13, 2022 and that she rode her bicycle to work on June 14, 2022. The Former Tenant states that she stayed at her boyfriend's residence from June 12, 2022 - June 16, 2022 and produced a copy of a visitor parking receipt showing she was allowed to park for this time period.
21. I do not find it was reasonable for the Landlords to replace the locks. I find the Tenant returned the keys to the Landlords on June 13, 2022 as this was undisputed by the parties. I accept the Tenant's testimony that she removed her vehicle from the condominium parking spot at 6:13 pm on June 13, 2022. I find this is supported by the visitor parking receipt and I found the Former Tenant's testimony persuasive.
22. This order contains all of the reasons in this matter and no further reasons will issue.

It is ordered that:

1. The Former Tenant shall pay to the Landlords \$578.00, which represents the reasonable costs the Landlords will incur as a result of the damage to the laminate floors in the living room and the second bedroom.
2. The Former Tenant shall also pay to the Landlords \$201.00 for the cost of filing the application.
3. If the Former Tenant does not pay the Landlords the full amount owing on or before September 22, 2023 the Former Tenant will start to owe interest. This will be simple interest calculated from September 13, 2023 annually on the balance outstanding.

September 11, 2023

Date Issued

Kimberly Parish

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.

* Refer to the attached Summary of Calculations.

SUMMARY OF CALCULATIONS

Amount the Former Tenant must pay the Landlords:

Damage Costs	\$578.00
Application Filing Fee	\$201.00
Total amount owing to the Landlords	\$779.00

September 11, 2023 _____ **Date Issued** Kimberly
Parish

Member, Landlord and Tenant Board

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Toronto ON M7A 2G6

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