



**Order under Section 69 / 88.1 / 89
Residential Tenancies Act, 2006**

Citation: 1916923 Ontario Inc. v Scott-Montgomery, 2023 ONLTB 59674

Date: 2023-08-31

File Number: LTB-L-009097-23

In the matter of: 8, 115 FOXRIDGE DRIVE
TORONTO ON M1K2G4

Between: 1916923 Ontario Inc. Landlord

And

Ashley Scott-Montgomery Tenant

1916923 Ontario Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Ashley Scott-Montgomery (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, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises.

1916923 Ontario Inc. (the 'Landlord') also applied for an order requiring Ashley Scott-Montgomery (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.

1916923 Ontario Inc. (the 'Landlord') also applied for an order requiring Ashley Scott-Montgomery (the 'Tenant') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's conduct or that of another occupant of the rental unit or someone the Tenant permitted in the residential complex. This conduct substantially interfered with the Landlord's reasonable enjoyment of the residential complex or another lawful right, privilege or interest.

This application was heard by videoconference on July 27, 2023.

The Landlord's legal representative, Emilio Vaiano ('EV'), the Landlord's agent, Graham McIntyre

('GM'), the Landlord's witness, Jason Smith ('JS'), the Tenant, and the Tenant's witnesses, Renee Labonte ('RL'), Jasmine Sacha-Watson ('JS'), and David James Scott-Montgomery ('DS') attended the hearing. Although JS was present, she was not called to give evidence.

Determinations:

Preliminary Issues

1. The Tenant claimed that her son, JS is also a tenant of the rental unit.
2. The evidence before me was that JS was a minor when the lease was executed. The Tenant said he is now 20 and that he pays rent, so he is therefore a tenant. The evidence before me, however, was that the Tenant was the only tenant identified in the tenancy agreement, and there has been no agreement between the parties – in writing, orally, or impliedly - to add JS as a tenant to the tenancy agreement.
3. The Tenant is the sole tenant of the rental unit. JS is an occupant of the rental unit.
4. At the outset of the hearing, EV advised that the Landlord would not seek termination of the tenancy on the basis of the N5 notice of termination on which the application was based. The Landlord only sought monetary compensation.

Compensation for Damage

Evidence of GM

5. GM is the owner of the corporate Landlord.
6. He said that on January 4, 2023, he was conducting an inspection of the rental unit, and he noticed damage to two closet doors. He said one had a large hole and the other had numerous puncture marks.
7. GM presented a quotation from JS contracting, dated January 4, 2023 for \$1,243.00, inclusive of HST to remove the two damaged closet doors, replace them with new 24” doors, and install new hardware and door hinges. To support the estimated cost further, the Landlord also entered as evidence a document showing the cost of the doors at Rona, was \$254.00 each.
8. The Landlord also provided photographs of the damage to the doors. The photo of the damaged hallway door reveals two visible puncture marks in the door. This photo was taken by GM on January 4, 2023. The second closet door that was damaged is next to the unit entry door. The photos of this door reveal a large circular indentation in the door.
9. GM said the Tenant had acknowledged the damage but that she had someone attempt to repair it with some type of epoxy, and she then took the position that there was no damage.

10. GM could not say how this damage occurred, but believed that a lot of force would need to be used to cause the damage to these doors. He said that these doors have not yet been replaced.
11. GM said that on September 29, 2021, a person who was living with the Tenant was bringing cannabis plants into the building, and he jammed paper inside the locking mechanism of the door giving entry to the building to hold it open. GM said this damaged the locking mechanism and he had to hire a locksmith to repair it.
12. GM entered as evidence security camera footage of a person with the Tenant's dog opening the building door, finding a piece of paper, ripping it, and apparently shoving some paper into the locking mechanism. GM said he had to pull the paper out of the locking mechanism with pliers, which caused damage. GM presented an invoice for the cost to repair this damage in the amount of \$350.25.
13. GM said that on August 18, 2021, the Tenant had removed a door from the unit, and that it had been broken in half and put in the garbage. At the time, the handle for another door had also been smashed.
14. GM presented an invoice dated August 18, 2021 to install a new door and hardware, and to repair damage to a door frame and striker plate in the rental unit. The invoice is for this was \$636.45, including HST.

Evidence of JS

15. JS is the owner and operator of J.S. Contracting. JS provided the January 4, 2023 quote and the August 18, 2021 invoice referred to above.
16. He said he has been in business for about 15 years, and it is a "one man operation".
17. JS said that based on his assessment of the photos of the closet doors the Landlord took on January 4, 2023, the damage would have been caused by trauma to the door, and not wear and tear or a manufacturing defect. He said these doors could not just be repaired with putty.
18. With respect to the August 18, 2021 invoice, he said that he saw the broken door from the rental unit in a garbage bin at the time. He also said the striker plate he had to repair had been destroyed, and it must have been done by force. He confirmed the August 18, 2021 invoice was paid by the Landlord.
19. On cross-examination, the Tenant challenged JS's recollection of seeing the broken door in a garbage bin in August 2021, suggesting there was no garbage bin at the residential complex at the time. JS said there was a bin there, at the Southeast part of the property.

Evidence of the Tenant

20. The Tenant said she moved into the rental unit in 2017.

21. The Tenant submitted a photograph of the door where the Landlord said there were puncture marks, and said there was no actual damage to that door.
22. She said the damage to the closet door with the circular indentation was caused by the knob from the entry door to the unit hitting it. This appears to be accurate, because the circular indentation appears to be about the same size as the knob, and in the location where the knob would hit the closet door. She said this happened because the arm at the top of the door was not connected for some time, allowing the entry door to swing freely to the closet door. She said this occurred about two months after she moved in. She said she made a maintenance request to fix the door opener, and it was repaired the next day.
23. The Tenant said that the damage to the building entry door was not caused by her guest and that people regularly prop that door open. On cross-examination, the Tenant said the person in the video shown by the Landlord is her ex-boyfriend, and he was her guest, not an occupant of the rental unit.
24. The Tenant said that the door that had to be replaced in August 2021 was broken when she moved in. She said she removed it in 2018 because it was broken, and that she has a letter from the former tenant of the rental unit confirming that it was broken before the Tenant moved in. The Tenant said she did not know about the damaged door handle referred to by GM, and was not sure if she may have damaged it accidentally.

Evidence of DS

25. DS said that at the start of the tenancy, the door that was replaced in August 2021 was already damaged and being held together by screws.
26. He said the closet door next to the entry door was damaged when the front door slammed into it at a time when the arm at the top of the door was not connected for a few days.
27. DS also said that the entry door to the building is frequently propped open, and he notices this 5-6 times per week. He said people jam “random stuff” in the door to hold it open.

Evidence of RL

28. RL said that it is common to find pieces of mail being used to prop the building entry door open.

Analysis

29. To prove a fact on a balance of probabilities, one must present clear, convincing, and cogent evidence of the fact: *FH v. McDougall*, 2008 SCC 53 (CanLII), para 46. This is the Landlord’s application, and so the Landlord bears the burden of proof.

January 4, 2023

30. I accept the Landlord's evidence that the two closet doors were damaged by the willful or negligent conduct of the Tenant or someone living with or visiting her. The puncture marks in the hallway closet door could not have been cause by normal wear and tear. Force would need to be applied to cause the damage. This also means that this was undue damage.
31. While the closet door next to the entry door may have been damaged by the entry door hitting it, and this may have been possible because the door closer was not connected for a few days, the entry door would need to hit the closet door with substantial force to cause the damage depicted in the photos. Opening the door and this degree of force, and allowing the knob of the entry door to hit the closet door forcefully enough to cause this damage amounts to willful or negligent conduct. This was not normal wear and tear, and this damage was also undue.
32. These doors cannot simply be repaired with putty or epoxy, and need to be replaced.
33. The Landlord will incur out-of-pocket expenses of \$1,243.00 to replace these doors.

September 29, 2021

34. I find that the Landlord has not presented sufficient clear, convincing, and cogent evidence to prove that the Tenant's guest damaged the door giving entry to the building. While it is apparent that the Tenant's ex-boyfriend did use or attempt to use paper in the locking mechanism to keep the door from locking, it is not clear that this is what caused the damage to the locking mechanism.
35. The Tenant, DS, and RL all gave evidence that other people commonly prop the door open, including by using pieces of mail to stick in the locking mechanism. The video of the Tenant's boyfriend was not date stamped, and GM said the damage actually occurred when he pulled paper out of the locking mechanism with pliers.
36. The Landlord has not proven on a balance of probabilities that the damage alleged to the door giving entry to the building was cause by the Tenant's ex-boyfriend.

August 18, 2021

37. The Landlord did not present sufficient clear, convincing, and cogent evidence to prove that the Tenant or someone living with or visiting her caused damage to the door that was replaced on August 18, 2021.
38. The Tenant and DS said that this door was already damaged when they moved in. GM did say he would not rent a unit with a broken door, but I do not find this general statement to be sufficient to establish that the door was not actually damaged when the Tenant moved in. I am not satisfied on a balance of probabilities that the Tenant or someone living with or visiting her cause the damage to this door.

39. JS said a striker plate was destroyed and had to be replaced at this time, and GM said that a door handle was smashed. The invoice did not separate out the cost to repair the striker plate from the cost to replace the door, and there was no evidence of the cost to repair or replace a smashed door handle. I am therefore not able to determine what the Landlord's out-of-pocket expenses were to repair the striker plate or door handle.
40. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Compensation for Substantial Interference

41. The Landlord claimed compensation for reasonable out-of-pocket expenses incurred because the Tenant, an occupant, or guest of the Tenant or an occupant substantially interfered with the Landlord's reasonable enjoyment of the rental unit or residential complex, or with the Landlord's lawful right, privilege, or interests. The allegations were that the Tenant and JS are abusive and intimidate other tenants, including by making threats and saying obscene and vile things to other tenants. The amount claimed was \$0.00, there was no evidence of this conduct presented, nor was there any evidence of out-of-pocket expenses incurred as a result of this conduct.
42. The Landlord has not proven that the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex substantially interfered with the reasonable enjoyment of the residential complex by the Landlord or another lawful right, privilege or interest of the Landlord. The Landlord has also not proven that they incurred or will incur reasonable out-of-pocket expenses because of such conduct.

It is ordered that:

1. The Tenant shall pay to the Landlord \$1,243.00, which represents the reasonable costs of replacing the damaged property.
2. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
3. The total amount the Tenant owes the Landlord is \$1,429.00.
4. If the Tenant does not pay the Landlord the full amount owing on or before September 11, 2023, the Tenant will start to owe interest. This will be simple interest calculated from September 12, 2023 at 6.00% annually on the balance outstanding.

August 31, 2023

Date Issued

Mark Melchers
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.