



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

Citation: COAL HARBOUR PROPERTIES C/O BRIARLANE RENTAL PROPERTY MGMT INC.
v Asante, 2023 ONLTB 57526

Date: 2023-08-22

File Number: LTB-L-054214-22

In the matter of: 1304, 350 QUEENS QUAY W TORONTO
ON M5V3A7

Between: COAL HARBOUR PROPERTIES C/O BRIARLANE RENTAL
Landlord
PROPERTY MGMT INC.

And

Jason Asante

Tenant

COAL HARBOUR PROPERTIES C/O BRIARLANE RENTAL PROPERTY MGMT INC. (the 'Landlord') applied for an order to terminate the tenancy and evict Jason Asante (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;
- 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 Tenant remained in the unit after the termination date.

This application was heard by videoconference on August 14, 2023.

Only the Landlord's agent, Hughroy Hanson, attended the hearing. The Landlord was represented by Leo Corsetti.

As of 9:38am, 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.

Determinations:

1. At the hearing, the Landlord's uncontested evidence was the Tenant was evicted from the rental unit on July 6, 2023.
2. As such, the request for eviction under the application was no longer necessary.

First Request to Amend

3. The Board's records show the Landlord filed a request to amend their L2 application on March 22, 2023, to include a damage claim of \$1,070.40 pursuant to subsection 89(1) of the Act.
4. At the hearing, the Landlord's representative's uncontested evidence was, the request to amend was also served to the Tenant in advance of the hearing.
5. Rule 15.3 of the Board's Rules of Procedure outlines the considerations made at the hearing in deciding whether to grant a request to amend which include the following:
 - a. whether the amendment was requested as soon as the need for it was known;
 - b. any prejudice a party may experience as a result of the amendment;
 - c. whether the amendment is significant enough to warrant any delay that may be caused by the amendment;
 - d. whether the amendment is necessary and was requested in good faith; and e. any other relevant factors.
6. Based on the submissions before the Board, I am satisfied the Tenant was aware of the amended damage claim as they were served with a copy of the amended application before the hearing date.
7. As such, this request to amend was granted.

Second Request to Amend

8. At the hearing, the Landlord requested to amend the application further to include a claim for further damages that took place after the initial request was filed. The Landlord submitted that while an amended application was not filed with the Board or the Tenant, the Tenant was aware of the Landlord's intention through their request to shorten time wherein the Landlord stated at paragraph 7:

7. On May 08, 2023, the police broke down the Tenants unit door for a second time after the filing of the N5. The first cost of the door being replaced was included with the filing of the N5 in the amount of \$1,070.40. The Landlord has now replaced the door that the police have erratically kicked down for a second time in the amount of \$1,412.50. This is an out-of-pocket expense of \$2,482.90 for the Landlord, which is not to be expected as it is not normal wear and tear.

(Exhibit #3)

9. I am not satisfied that the Tenant was aware of the Landlord's intent to amend their claim further at the hearing for the additional \$1,412.50. I find there would be significant prejudice to the Tenant by granting the Landlord's request in the Tenant's absence and thus, the second request to amend was denied.

L2 APPLICATION

10. The Landlord's witness, HH, who is the property manager for the residential complex, testified that on July 27, 2022, he received a report from security regarding an incident that took place at 6:00am at the rental unit. A copy of this report was submitted into evidence.
11. According to this report, the police arrived onsite that day and knocked on the door of the rental unit; as there was no response, the police forced entry into the rental unit to find the Tenant and their occupants inside. The Tenant was then arrested and taken into custody.
12. As a result of this incident, the door to the rental unit was damaged and the Landlord incurred costs of \$1,107.40 to replace it. A copy of the invoice dated August 2, 2022 and the letter that was sent with it, to the Tenant was also submitted into evidence.
13. HH confirmed that the Landlord had paid the invoice to the company, which was one of their regular contractors. HH also confirmed that the Tenant has not responded to the Landlord's letter or request for the damages related to the replacement of the door.
14. The Landlord is aware of the \$37.00 discrepancy between the amount claimed and the invoice amount and seeks the amount being claimed.

ANALYSIS

15. In order for an application to succeed under subsection 89(1) of the Act, a landlord must establish the following:
- There was property damage to the rental unit or residential complex;
 - The damage is "undue" meaning that it is not normal wear and tear and it is not insignificant; and
 - The damage was a result of wilful or negligent conduct.
16. In this context, I take the word "property" to refer to the physical objects like the walls, ceilings, floors, appliances and fixtures in a residential complex.

17. If all of these factors are met, then the amount the Board can award is limited to the reasonable cost of repair – the replacement cost cannot be awarded unless it is not reasonable for the damage to be repaired.
18. Based on the uncontested evidence of the Landlord, I find the damage to the door constitutes undue property damage not a result of normal wear-and-tear. By failing to open the door, while being inside the rental unit, at the police’s request, which resulted in the forced entry, the Tenant knew or ought to have known this would cause significant damage.
19. With respect to the amount claimed by the Landlord, I find that is less than the cost incurred by the Landlord and has been paid by the Landlord. As I find the amount claimed in the application to be reasonable given my knowledge and experience in other similar matters, an order shall issue requiring the amount to be paid in full.
20. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenant terminated on July 6, 2023 when the Tenant was evicted from the rental unit.
2. The Tenant shall pay to the Landlord \$1,070.40, which represents compensation for the damage to the door.
3. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
4. The total amount the Tenant owes the Landlord is \$1,256.40.
5. If the Tenant does not pay the Landlord the full amount owing on or before September 2, 2023, the Tenant will start to owe interest. This will be simple interest calculated from September 3, 2023 at 6.00% annually on the balance outstanding.

August 22, 2023

Date Issued

Sonia Anwar-Ali

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.