



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

Citation: Hedd-Willaims v Danby, 2023 ONLTB 52602

Date: 2023-08-11

File Number: LTB-L-029820-22

In the matter of: LOWER UNIT, 1010 BRUCE AVE
WINDSOR ON N9A4X9

Between: Zohderock Hedd-Willaims Landlord

And

Lee-Ann Danby Tenants
Douglas Miller

Zohderock Hedd-Willaims (the 'Landlord') applied for an order to terminate the tenancy and evict Lee-Ann Danby and Douglas Miller (the 'Tenants') because:

- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another Tenants;
- the Tenants, another occupant of the rental unit or someone the Tenants 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.

Zohderock Hedd-Willaims (the 'Landlord') also applied for an order requiring Lee-Ann Bondy and Douglas Miller (the 'Tenants') 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 Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex.

This application was heard by videoconference on June 29, 2023.

The Landlord, the Landlord's legal representative, Trevor Scheib ('TS'), the Tenants, and the Tenants' legal representative, Christopher Hall ('CH'), attended the hearing.

Determinations:

Termination of Tenancy

1. At the outset of the hearing, the parties advised that they had agreed that the tenancy would terminate on consent as of June 30, 2023.

- The Tenants were in possession of the rental unit on the date the application was filed.

Daily Compensation, Rent Deposit

- The termination date in the N5 notice of termination that this application is based on was April 30, 2022. The Tenants were required to pay the Landlord \$20,958.90 in daily compensation for use and occupation of the rental unit for the period from May 1, 2022 to June 29, 2023.
- Based on the Monthly rent, the daily compensation is \$49.32. This amount is calculated as follows: \$1,500.00 x 12, divided by 365 days.
- The Landlord collected a rent deposit of \$1,500.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$89.63 is owing to the Tenants for the period from June 19, 2019 to June 29, 2023.
- In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

Compensation for Damage

- As explained below, the Landlord has not proven that the Tenants, another occupant of the rental unit or a person whom the Tenants permitted in the residential complex wilfully or negligently caused undue damage to the rental unit or residential complex.

Landlord's Direct Evidence

- The Landlord said the residential complex is a stacked duplex, with an upper and lower unit, each of which has separate drain lines.
- The Landlord said that after the Tenants called the City of Windsor, a public health inspector attended the rental unit on March 17, 2022 because of a plumbing issue. The health inspector issued an order, determining that he had found evidence of sewage backup in the basement of the rental unit, and requiring the Landlord to repair the plumbing and clean and disinfect the areas affected by sewage contamination.
- The inspector called the Landlord, and the Landlord said that he clarified the situation for the inspector. The Landlord said the issue was that there are two pipes for "gray" water, and the pipe coming from the Tenant's kitchen sink was clogged. The Landlord said it was clogged because the Tenants had been pouring grease down the drain. Although the order only says that the inspector found "[e]vidence of sewage back up in the basement of the rental unit", the Landlord said that the inspector found feces, but could not tell if it was from humans or mice/rats.
- The Landlord said that he entered the rental unit and got the pipe unclogged, and that a plumber attended and he eeled debris from the pipe so that water could flow. The Landlord said his plumber told him this was a temporary fix because this 2-inch pipe was clogged to the extent that there was only a ½ inch opening. The plumber told the Landlord that a 20-foot stretch of pipe would ultimately need to be replaced. This would be a particularly substantial job because it would require some excavation in the basement.

12. The Landlord also submitted an email from his plumber, dated March 3, 2022 stating that this is required, and that excessive grease buildup was found in the pipe.
13. The Landlord said the Tenants denied pouring grease in the drain, but that his plumber could not eel out all of the debris because of hard grease buildup.
14. The Landlord presented an estimate from his plumber to replace the pipe for a total of \$2,712.00. The Landlord also presented an invoice for \$175.75 from his plumber for eeling the pipe.

Cross-Examination of Landlord

15. On cross-examination, the Landlord said that the Health Inspector closed the City's file because of the temporary fix implemented by the Landlord. He said he had an email to that effect, but he had deleted it.
16. The Landlord also said that he bought the house in 2016, and had one other tenant in the rental unit before the Tenants. The Landlord did not know how old the house was, but said that everything was "running smoothly" when the Tenants moved in. He said that he knows the Tenants caused damage to the pipe by pouring grease down the drain because the pipe was clogged by grease.
17. The Landlord said he did have the pipes inspected in 2016 when he bought the property, but does not have an inspection report and the inspector has passed away.
18. When asked what type of piping is under the kitchen sink in the rental unit, the Landlord said it was black PVC piping, and that is what was there when he bought the property.
19. The Landlord said he is not a plumber, and he was not there when his plumber disconnected the pipe in the basement. When asked if the clog could have been caused by buildup over years, the Landlord said not necessarily, that it takes months according to his plumber.

Hearsay Evidence

20. Neither the health inspector nor the Landlord's plumber were present to give evidence. While hearsay evidence is admissible before the LTB, it is significant that the people who made the statements being relied upon were not under oath or affirmation when making the statements, and were also not present at the hearing so that their evidence could be tested on cross-examination. To the extent that hearsay evidence was presented by the Landlord to be relied upon for the truth of its contents, it will not be given as much weight as evidence within the direct knowledge of a person at the hearing and available for cross-examination.

Tenants' Direct Evidence – Lee-Ann Danby ('LD')

21. LD said the Tenants moved into the rental unit June 15, 2019.
22. She said the Tenants had not had issues with drainage before 2022 when they received the N5 notice.

23. Contrary to the Landlord's evidence, LD said that there were initially old iron pipes under the sink until early January 2023 when those pipes were replaced because the upper unit's line was clogged resulting in flooding in the rental unit. She also said that the plumbers cut a pipe in her unit where it goes up to the upper unit and down to the basement.
24. She did not know the names of the upper unit tenants, but said it is a family with children.
25. LD said there was sewage backed up in the basement for a long time and the Landlord was not fixing it, which is why she called the City.
26. LD unequivocally stated that she and her family do not pour grease down the drain. She said that they put it in a jar and throw it out.

Cross-Examination of LD

27. On cross-examination, LD said that to her knowledge there was not any drainage issues in the rental unit when she moved in, but she is not a plumber. She said the Tenants used the sink and it drained, but also that this was never the problem – the sink always drained. The problem was the sewage back up in the basement.
28. LD also reiterated that the Tenants do not put grease down the drain.

Analysis

29. This is the Landlord's application, and as such, the Landlord has the burden of proving his case on a balance of probabilities. To prove a fact on a balance of probabilities, there must be sufficient clear, convincing, and cogent evidence to establish the fact: *FH v. McDougall*, 2008 SCC 53 (CanLII), para 46.
30. The Landlord has failed to discharge this burden. There was not sufficient clear, convincing, and cogent evidence for me to be able to determine that the Tenants, their occupants or guests caused undue damage (meaning damage beyond reasonable wear and tear) to the rental unit or residential complex by their willful or negligent conduct.
31. I am not satisfied that the Landlord proved that the plumbing issue in the basement was caused by the Tenants or their guests or occupants pouring grease down the drain in the kitchen sink. LD unequivocally denied that this had occurred, and also said that the kitchen drain always drained.
32. The Landlord's claim for compensation for damage must therefore be dismissed.
33. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and given the parties' consent, I find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated as of June 30, 2023.

2. If the unit was not vacated on or before June 30, 2023, then starting July 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after July 1, 2023.
4. The Landlord's claim for compensation for undue damage caused to the rental unit is dismissed.
5. The Tenants shall pay to the Landlord \$20,958.90, which represents compensation for the use of the unit from May 1, 2022 to June 29, 2023. Any amount of rent the Tenants paid for this period shall be deducted from this amount.
6. The Tenants shall also pay the Landlord compensation of \$49.32 per day for the use of the unit starting June 30, 2023 until the date the Tenants moves out of the unit. Any amount of rent the Tenants paid for this period shall be deducted from this amount.
7. The Landlord owes the Tenants \$1,589.63 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Tenants.
8. The Landlord or the Tenants shall pay to the other any sum of money that is owed as a result of this order.
9. If the Tenants or Landlord do not pay to the other the full amount owing on or before August 22, 2023, they will start to owe interest. This will be simple interest calculated from July 1, 2023 at 6.00% annually on the balance outstanding.

August 11, 2023
Date Issued

Mark Melchers
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.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenants expires on January 1, 2024 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.