



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

Citation: Yan Hua Tian v Mesha Shannon Smith, 2023 ONLTB 40037

Date: 2023-05-26

File Number: LTB-L-054420-22

In the matter of: 9, 71 CASS AVE
SCARBOROUGH ON M1T3P8

Between: Yan Hua Tian Landlord
Yong Chen

And

Mesha Shannon Smith Tenant

Yan Hua Tian and Yong Chen (the 'Landlord') applied for an order to terminate the tenancy and evict Mesha Shannon Smith (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 Tenant has been persistently late in paying the Tenant's rent.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

Yan Hua Tian and Yong Chen (the 'Landlord') applied for an order requiring Mesha Shannon Smith (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.

This application was heard by videoconference on May 17, 2023.

The Landlord and the Tenant attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation for the damage to the rental unit (partially). Therefore, an order shall issue terminating the tenancy June 30, 2023 and awarding the Landlord \$2,231.00 which is inclusive of the application filing fee.
2. By way of background, this is a month-to-month tenancy in which rent is due on the 8th of each month in the amount of \$2,312.00. This tenancy began two years ago. The rental unit is a condominium-unit townhouse, which the Tenant occupies with her 3 minor children.
3. The Tenant was in possession of the rental unit on the date the application was filed and continues to be in possession as of the hearing date.
4. The Landlord's L2 application is based on two notices of termination: the N8 and N5. It also includes a section 89(1) damage claim in the amount of \$10,452.50.

N8 Notice of Termination

5. On September 17, 2022, the Landlord gave the Tenant a N8 notice of termination pursuant to subsection 58(1) of the Act with a termination date of December 7, 2022 alleging the Tenant was persistently late in making her rent period for the months of July, September and November, 2021; January – May and July – August 2022.
6. At the hearing, the Landlord's evidence was, after serving the Tenant with the N8, the Tenant continued to pay the rent late from September 2022- May 2023.
7. The Landlord seeks termination of the tenancy and the reimbursement of the application filing fee.
8. The Tenant does not dispute that the rent has been paid late to the Landlord. She explains that the reason her rent was paid late was due to a reduction in hours for her former spouse's pay combined with a death in the family.
9. However, the Tenant seeks to preserve her tenancy and requests relief in the form of a conditional order requiring her to pay the rent on time for the next twelve months as she is confident, she will be able to make the payments on time going forward.
10. In the alternative, the Tenant seeks a delay in eviction of 3-4 months to wind up her home of two years and secure accommodation elsewhere.
11. Subsection 58(1) of the Act states:

58 (1) A landlord may give a tenant notice of termination of their tenancy on any of the following grounds:

1. The tenant has persistently failed to pay rent on the date it becomes due and payable.

...

12. Based on the evidence before the Board, I find that the Tenant has persistently failed to pay the rent on the date it was due. This is not disputed by the parties.
13. The problem with the Tenant's request for relief is that while initially she explained the tardiness in payment was due to her spouse's reduced hours, she also testified that she has now separated from him and that she does not receive child support from him. Further, aside from sewing and hair styling, no further submissions were made with respect to income sources apart from family assistance.
14. What appears to be the case is an issue of affordability – the evidence before the Board fails to establish how the Tenant will be able to pay the rent on time as I have not heard of any evidence that there is a change in circumstances or that there is more income coming into the household. As such, I find that it would be unfair to grant the Tenant the relief they are requesting pursuant to section 83(1)(a) of the Act.

N5 Notice of Termination

15. On September 17, 2022, the Landlord also gave the Tenant a N5 notice of termination pursuant to subsections 62(1) and 64(1) of the Act with a termination date of October 9, 2022 alleging the Tenant has substantially interfered with the Landlord's lawful rights, interests and privileges by causing damage to the rental unit, disconnecting the smoke detectors and failing to provide the Landlord with a copy of the Tenant's insurance policy when requested.
16. As this was a first N5, the Tenant had seven days to remedy the issue; this remedy period was between September 17-24, 2022. It was the Landlord's evidence that the Tenant failed to rectify the behaviours complained of, within the remedy period, which resulted in the Landlord filing the L2 application on September 27, 2022.
17. The Landlord's evidence was, during an inspection in September 2022, damages were discovered by the Landlord to the following in the rental unit:
 - the walls of the main floor dining room, main floor living room, two bedrooms in the basement and one wall on the second floor bedroom had been painted unprofessionally by the Tenant and without the Landlord's consent;
 - two of the basement bedroom floor tiles had been removed/damaged;
 - the patio screen door was broken;

- the kitchen window screen was broken;
 - the third bedroom on the second floor's window handle was missing;
 - the fridge door seal was detached from the door;
 - the second floor bathroom vanity cabinet had been removed; and
 - the main floor kitchen cabinet door hinge was damaged and did not close properly.
18. The Landlord testified that upon discussing the damages with the Tenant, the Tenant admitted to being responsible for them given her and her children's conduct – and the Tenant sought time to fix these items.
 19. The Landlord testified that it was also during this inspection that the Landlord discovered the Tenant had removed the smoke detectors at all three levels of the rental unit and the Tenant did not provide a copy of her insurance policy.
 20. The Landlord testified that after the N5 was served, these issues remain uncorrected and as such, the Landlord seeks a termination of the tenancy.
 21. The Tenant does not dispute removing the smoke detectors from the rental unit. She explains that she cooks regularly and that the smoke detector is sensitive and rings frequently. This is the reason why it was removed.
 22. The Tenant does not dispute the allegation of failing to providing a copy of the insurance policy to the Landlord because she testified that she cancelled the insurance as it was unaffordable for her. However, the Tenant is willing to obtain a quote and reinstitute a policy to satisfy the Landlord.
 23. With respect to the list of damages outlined in the Landlord's application, the Tenant admits to painting the walls because she did not like the white colour as it didn't feel like home to her. She testified that she discussed painting the wall with the Landlord who said it was okay but did not inform the Landlord of the colours prior to painting. She confirms to date the paint remains on the walls.
 24. The Tenant also admits that the floor tiles were removed by her and that she has the replacement tiles but needs to find the time to install them. The Tenant states that the window handle just needs to be put back together and the main floor kitchen cabinet door hinge was like that when she moved in. She also confirmed that as of the date of the hearing, these items remain unrectified.
 25. The Tenant seeks to preserve her tenancy and seeks time until June 30, 2023 to repair the remaining items.
 26. Subsections 62(1) and 64(1) of the Act state the following:

62(1) A landlord may give a tenant notice of termination of the tenancy 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.

64(1) A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.

27. Based on the evidence before the Board, I find that the Tenant has substantially interfered with the Landlord's lawful rights, interests and privileges when she removed the smoke detectors, damaged the floor tiles, windows, cabinet, patio door, and failed to provide a copy of her insurance policy to the Landlord. In doing so, she has jeopardized her own safety and increased the risk of liability on the Landlord in the event of an emergency.
28. With respect to the Tenant's request to preserve her tenancy and have until June 30, 2023 to repair the damages claimed by the Landlord, I find that the Tenant has had since September 2022 to perform these repairs but that she has either been unwilling or unable to do so. I do not find a conditional order would be appropriate under the circumstances as nothing has changed since the N5 was served.
29. As such, I find that it would be unfair to grant the Tenant the relief they are requesting pursuant to section 83(1)(a) of the Act.

Section 89(1) Damage Claim

30. As part of the Landlord's L2 application is a damage claim for \$10,452.50 with respect to the damages outlined on the N5 notice of termination.
31. In order for an application to succeed under subsection 89(1) of the Act, a landlord must establish the following:
 - a. There was property damage to the rental unit or residential complex;
 - b. The damage is "undue" meaning that it is not normal wear and tear and it is not insignificant; and
 - c. The damage was a result of wilful or negligent conduct by the tenant, occupant or guest.
32. 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.
33. In terms of the damage as a result of painting the walls, the photographs submitted by the Landlord show the walls of the main floor dining room, main floor living room, two bedrooms in the basement and one wall on the second-floor bedroom covered in pink, grey

and black paint that have the edges unfinished and have also permeated to the ceiling and trim.

34. Although I agree that the Tenant breached the lease by painting the unit without permission, s. 89(1) is not an avenue available to a landlord to sue a tenant for general damages or breach of contract. Such claims must be brought elsewhere.
35. The pictures filed by the Landlord do not show walls that have suffered “undue damage”. There is nothing to indicate that the quality of the paint job is so deficient that it would constitute “undue damage”. The Tenant simply painted the unit in colours he liked. I do not agree with the Landlord’s submission that repainting the walls is “undue damage” within the meaning of s. 89(1) regardless of the quality of the paint job.
36. As a result, I am not prepared to grant the Landlord’s application with respect to the cost the Landlord will incur to repaint the unit’s walls to suit the Landlord’s taste in colours.
37. However, I do find that in painting the walls, there has been damage to the ceiling and the trims of these spaces that is property damage not a result of normal wear and tear; rather, negligence on the Tenant’s part of not being careful in their paint job. Thus, a portion of the quote related to this repair will be ordered in the amount of \$1,500.00.
38. With respect to the damage to the vinyl flooring, while I find that it constitutes property damage that is not from normal wear-and-tear, I find the quote submitted by the Landlord was to replace the flooring in the entire space and not the two tiles that were impacted. Further, the evidence was insufficient to establish that replacement is necessary, and no evidence was led with respect to any cleaning efforts and its success. As such, this claim must be dismissed.
39. With respect to the screen damage to the patio door and window, while I find that it constitutes property damage that is not from normal wear-and-tear, I find the quote submitted by the Landlord claims an excessive amount of \$800.00 for just the window screen. Given my knowledge and experience in other similar matters, I find it appropriate to award the Landlord \$400.00 for these damages.
40. With respect to the missing window handle, I am satisfied it constitutes property damage that is not a result of normal wear and tear and as a result of wilful or negligent conduct by the Tenant or their occupants. The quote submitted by the Landlord indicates the cost of this repair to be \$150.00. I find the quote submitted by the Landlord to be excessive in amount. Given my knowledge and experience in other similar matters, I find it appropriate to award the Landlord \$75.00 for this damage.
41. In terms of the fridge door seal and the bathroom vanity cabinet, I find these claims have been abandoned as they were not articulated at the hearing and there was no documentation presented in support of these claims
42. Finally, with respect to the main floor kitchen cabinet door hinge, I am satisfied it constitutes property damage that is not a result of normal wear and tear and as a result of wilful or negligent conduct by the Tenant or their occupants. The photograph submitted by

the Landlord shows the hinge has come off its base; I find that the hinge requires replacement. While the quote submitted by the Landlord claims \$800.00 for this repair, I find it appropriate to award \$70.00 given my knowledge and experience in other similar matters.

43. A total of \$2,045.00 will be awarded to the Landlord for the damages claimed pursuant to subsection 89(1) of the Act.

Daily compensation, NSF charges, rent deposit

44. While the Landlord's application seeks a per diem compensation, it appears that the Landlord has filed a separate arrears application on file LTB-L-008840-23.
45. As such, the issue of compensation shall be dealt in that application.
46. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Relief from eviction

47. The Tenant seeks 3-4 months to secure alternative accommodation for her and her three children.
48. The Landlord opposes any delay in eviction and submits that the Tenant has had 9 months notice to weigh her options.
49. Given the Tenant's change in marital status and family circumstances, together with the length of this tenancy, while I find 4 months to be excessive in length, I find that a short delay in eviction is warranted. Since the Tenant's children attend school within the area, I find it appropriate to delay eviction to June 30, 2023 to avoid any disruption to their school year completion which will also give the Tenant some time to look for alternative housing.
50. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until June 30, 2023 pursuant to subsection 83(1)(b) of the Act.
51. 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 is terminated. The Tenant must move out of the rental unit on or before June 30, 2023.

2. If the unit is 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 Tenant shall pay to the Landlord \$2,045.00, which represents the reasonable costs of restoring the rental unit to its original condition and rectifying the damages.
5. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
6. The total amount owing is \$2,231.00.
7. If the Tenant does not pay the Landlord the full amount owing on or before June 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 1, 2023 at 6.00% annually on the balance outstanding.

2023 ONL TB 40037 (CanLII)

May 26, 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.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant 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.