



**Order under Section 89(1)
Residential Tenancies Act, 2006**

Citation: Kirk v Tara Davidson, 2023 ONLTB 33800

Date: 2023-05-10

File Number: LTB-L-025995-22

In the matter of: 205 ATHOL ST.
WHITBY ON L1N3Z3

Between: Debra Kirk Landlord

And

Tara Davidson Tenant

Debra Kirk (the 'Landlord') applied for an order to terminate the tenancy and evict Tara Davidson (the 'Tenant') because 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 applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket costs that the Landlord has incurred or will incur to repair or replace undue damage to the 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 April 19, 2023. The Landlord's agent, Launi Guilherme, and the Landlord's representative, Daniel Greanya, attended the hearing. As of 11:34 am, 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.

Preliminary Issue:

1. The Landlord's representative submitted that the Landlord requests to amend the L2 application to seek compensation for damages only, with no termination of the tenancy.
2. Pursuant to s. 200(1) of the *Residential Tenancies Act, 2006* (the "Act"), and in accordance with the Board's Rule of Procedure 15.4, I granted the Landlord's request to amend the L2 application. The Landlord's request for the Tenant to pay the Landlord's reasonable outof-

pocket costs that the Landlord has incurred or will incur to repair or replace undue damage to the property will be considered pursuant to s. 89(1)(a) of the Act.

Determinations:

1. The Tenant was in possession of the rental unit on the date the application was filed on May 9, 2022, and remains in possession of the unit as of the day of the hearing.

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2. The Landlord's agent testified that the Tenant keeps removing a window to bring wood into the unit, and on March 25, 2022 the removal of the window caused rain to enter the unit. The agent stated that the constant removal of the window has caused damage to the window, and the estimate to repair this damage is \$200.00.
3. The Landlord's agent testified further that the Tenant keeps flushing debris down the toilet and on March 26, 2022 this caused the drainpipe to clog, the toilet to overflow, and a flood the basement. The agent stated that a plumber removed rags, Q-tips, bobby pins, and wipes from the drainpipe at a cost of \$776.88. The Landlord submitted an invoice of this cost. The Landlord's agent asserted that the constant debris in the drainpipe caused damage to the drainpipe, and the plumber recommended a replacement of the drainpipe at an estimated cost of \$800.00.
4. The Landlord's agent stated further that the Tenant advised her that on March 30, 2022 the Tenant's son kicked the front of the stove door, broke the glass window in the oven door, and rendered the oven unusable. The Tenant requested that the stove door be repaired to enable her to use the oven. The Landlord's agent added that a couple of burners on the stove were also not functioning. The agent remarked that the most economical option for these repairs was to buy a used stove, and a replacement stove was purchased on April 7, 2022. The Landlord provided an invoice of the stove purchase, dated April 12, 2022, at a cost of \$384.20.

Analysis

5. On the basis of the Landlord's uncontested evidence, I am satisfied that the Tenant's constant removal of the window caused an estimated \$200.00 in damage. I am also satisfied that the Tenant's misuse of the toilet required the services of a plumber to unclog the drainpipe at a cost of \$776.88, and will result in additional expenses of \$800.00 to replace the drainpipe.
6. I accept that the actions of the Tenant's son on March 30, 2022 rendered the oven in the stove unusable; however, two burners were also not functioning, and the Landlord did not establish that the son's actions were also responsible for the non-functioning burners.

Therefore, I find that the Tenant is not responsible for the non-functioning burners, and is liable for only 70% of the cost to replace the stove, for a sum of \$268.94.

7. Accordingly, I find that the Tenant, another occupant of the rental unit or a person whom the Tenant permitted in the residential complex, wilfully or negligently caused undue damage to the rental unit that resulted in out-of-pocket reasonable costs for the Landlord of \$2,045.82 to repair the damage.
8. The Landlord also incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

It is ordered that:

1. The Tenant shall pay to the Landlord \$2,045.82, which represents the reasonable costs of repairing the damaged property.
2. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.

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3. If the Tenant does not pay the Landlord the full amount owing of \$2,231.82 on or before May 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 1, 2023 at 6.00% annually on the balance outstanding.

May 10, 2023

Date Issued

Frank Ebner

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.