



Order under Section 69 / 88.2 Residential Tenancies Act, 2006

Citation: Mazaheri v Casanova, 2023 ONLTB 33311

Date: 2023-04-27

File Number: LTB-L-054757-22

LTB-L-065832-22

In the matter of: Basement Unit, 109 Bell Drive Whitby
ON L1N2T1

Between: Ali Mazaheri Landlord

And

Shaajah Ashanti Wisdom Casanova Tenant

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Ali Mazaheri (the 'Landlord') applied for an order to terminate the tenancy and evict Shaajah Ashanti Wisdom Casanova (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the building has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord in a building that has three or fewer residential units and the Landlord resides in the building.

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

The Landlord also applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

The Landlord also applied for an order requiring 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.

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The Landlord also applied for an order to terminate the tenancy and evict the Tenant because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on April 13, 2023. Only the Landlord attended the hearing.

As of 1:31 p.m., 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. The Landlord submitted that the Tenant vacated the rental unit on December 11, 2022. As the Tenant vacated the rental unit, the issue of termination is moot. The only remaining issues in the application are reasonable out-of-pocket expenses that are the result of the Tenant's failure to pay utility costs, reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property and the outstanding arrears.

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2. As explained below, the Landlord has proven on a balance of probabilities the claim for compensation in the application. Therefore, the Landlord is entitled to \$5,626.54 for utilities and damages.

Compensation for unpaid utilities

3. The Tenant failed to pay utilities that they were required to pay under the terms of the tenancy agreement.
4. The Landlord has incurred reasonable out-of-pocket expenses of \$626.54 as a result of the Tenant's failure to pay gas, electricity, and water. Submitted into evidence were the bills for the aforementioned utilities. Also submitted into evidence was the lease agreement specifying that the Tenant is responsible for paying for these utilities.

Compensation for damages

5. 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 or residential complex.

6. Submitted into evidence were photographs of the damage taken on December 14, 2022. The photographs showed a large hole in the drywall, excessive holes from nailing items into the wall, broken toilet, washer and fridge, scratches on the floor, and writing on the wall. The tenancy was 4 months long.

7. Subsection 89(1) says:

A landlord may apply to the Board for an order requiring a tenant to pay reasonable costs that the landlord has incurred or will incur for the repair of or, where repairing is not reasonable, the replacement of damaged property, 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 and the tenant is in possession of the rental unit.

8. This wording means that a landlord must establish that it is more likely than not that the tenant, an occupant or a guest, wilfully or negligently caused each item of property damage claimed.

9. The language of section 89 requires damage to be undue. It is recognized that some damage will occur over the regular course of time, due to regular wear and tear in a residential complex. Reasonable wear and tear would not normally constitute “undue damage” (*Kamoo v. Brampton Caledon Housing Corp.* 2005 O.J. No. 3911).

10. On a balance of probabilities, I find the Tenant wilfully or negligently caused undue damage to the rental unit or residential complex. I note that some of the damages specified by the Landlord are from regular wear and tear that is part from everyday living e.g. discoloration on the staircase, walls, dirt on the stovetop, etc. However, much of the damage is undue. For example, the hole in the drywall is so large it cannot be said to be a result of regular wear and tear. As such, I find that the Landlord established his claim for damages.

11. I also find that the Landlord will incur reasonable costs of \$5,000.00 to repair the damage and/or replace property that was damaged and cannot be repaired. Submitted into evidence were quotes from painting and cleaning services, appliances and fixtures. Excluding the amounts to address the damage from regular wear and tear set out above, the amount exceeds \$7,000.00. As such, I find that the Landlord’s claim for \$5,000.00 is reasonable.

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12. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.

13. The Tenant was in possession of the rental unit on the date the application was filed.

14. The Tenant vacated the rental unit on December 11, 2022. Rent arrears are calculated up to the date the Tenant vacated the unit.
15. The lawful rent is \$2,100.00. It was due on the 20th day of each month.
16. The Tenant has not made any payments since the application was filed.
17. The rent arrears owing to December 11, 2022 are \$5,718.88.
18. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
19. The Landlord collected a rent deposit of \$2,100.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.
20. Interest on the rent deposit, in the amount of \$8.15 is owing to the Tenant for the period from August 16, 2022 to December 11, 2022.

It is ordered that:

1. The Tenant shall pay to the Landlord \$626.54, which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the unpaid utility costs.
2. The Tenant shall pay to the Landlord \$5,000.00, which represents the reasonable costs of repairing the damage and replacing the damaged property.
3. The tenancy between the Landlord and the Tenant is terminated as of December 11, 2022, the date the Tenant moved out of the rental unit
4. The Tenant shall pay to the Landlord \$3,610.73. This amount includes rent arrears owing up to the date the Tenant moved out of the rental unit.
5. The Tenant shall also pay to the Landlord \$372.00 for the cost of filing the applications.
6. The total amount the Tenant shall pay to the Landlord is \$9,609.27. The rent deposit and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
7. If the Tenant does not pay the Landlord the full amount owing on or before May 8, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 9, 2023 at 6.00% annually on the balance outstanding.

April 27, 2023

Date Issued

Camille Tancioco

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.

**Schedule 1
SUMMARY OF CALCULATIONS**

A. Amount the Tenant must pay as the tenancy is terminated

| | |
|--|-------------------|
| Rent Owing To Move Out Date | \$5,718.88 |
| Application Filing Fees | \$372.00 |
| Unpaid Utility Costs | \$626.54 |
| Reasonable costs to repair or replace damaged property | \$5,000.00 |
| NSF Charges | \$0.00 |
| Less the amount the Tenant paid to the Landlord since the application was filed | - \$0.00 |
| Less the amount the Tenant paid into the LTB since the application was filed | - \$0.00 |
| Less the amount of the last month's rent deposit | - \$2,100.00 |
| Less the amount of the interest on the last month's rent deposit | - \$8.15 |
| Less the amount the Landlord owes the Tenant for an {abatement/rebate} | - \$0.00 |
| Less the amount of the credit that the Tenant is entitled to | - \$0.00 |
| Total amount owing to the Landlord | \$9,609.27 |