



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

Citation: Firmland (Cedar) Inc. v Moseley, 2023 ONLTB 27301

Date: 2023-03-31

File Number: LTB-L-011819-22

In the matter of: 3 CEDAR ST
AJAX ON L1S1T9

Between: Firmland (Cedar) Inc. Landlord

And

Michael Moseley and Victoria Windsor Tenants

Firmland (Cedar) Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Michael Moseley and Victoria Windsor (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe (**L1 application**).

The Landlord also applied for an order to terminate the tenancy and evict the Tenants because:

- 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 has also applied for an order requiring the Tenants to compensate the Landlord for the damage; and
- because the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex have substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant (**L2 Application**).

This application was heard by videoconference on January 10, 2023.

The following attended the hearing: the Landlord's Legal Representative Mark Ciobotaru, Landlord's Agent Gary Billing, Landlord's Agent Christine Bowins, Tim Ellis, Legal Representative for Tenant Victoria Windsor, and the Tenant Victoria Windsor (VW).

As of 11:39 a.m., the Tenant Michael Moseley (MM) 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 in the case of Mr. Moseley.

Determinations:

L1 Application – Non-payment of Rent

1. On February 11, 2022 the Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants 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.
2. Both Tenants were in possession of the rental unit on February 28, 2022, the date the application was filed.
3. VW vacated the rental unit effective February 28, 2022 pursuant to an N15 notice of termination served under section 47.1(2)(b) of the *Residential Tenancies Act, 2006* (the "Act"). In accordance with section 47.1(6) of the Act, VW's obligation to pay rent arrears ended effective February 28, 2022.
4. The Tenant MM vacated the rental unit on June 27, 2022. MM's obligation to pay rent arrears is calculated up to the date MM vacated the unit.
5. The lawful rent was \$2,450.00. It was due on the 1st day of each month.
6. The Tenants have not made any payments since the application was filed.
7. The rent arrears owing to June 27, 2022 are \$12,274.85. VW is responsible for half of the arrears owing to the date that she vacated unit in the amount of \$1,225.00. This will be deducted from the amount MM shall be ordered to pay the Landlord.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$2,450.00 from the Tenants and this deposit is still being held by the Landlord. The rent deposit must be applied to the arrears of rent owing by MM pursuant to section 47.2(8) of the Act.
10. Interest on the rent deposit in the amount of \$14.31 is owing to the Tenants for the period from June 1, 2021 to June 27, 2022.

L2 Application

11. At the Landlord's request, the L2 application is amended to remove VW as a respondent. However, as discussed below, as the damages occurred while VW was still a Tenant, MM shall only be ordered to pay 50% of the costs established by the Landlord.

12. As explained below, the Landlord has proven on a balance of probabilities a portion of the claim for compensation in the application. Therefore, MM shall pay to the Landlord the sum of \$50.00.
13. On February 11, 2022, the Landlord gave the Tenants an N5 notice of termination. The notice of termination contains the following allegations:
- that the Tenants had caused undue damage which included broken and cracked drywall and chewed and chipped door frame, and
 - the Tenants had painted the unit and not returned it to a neutral colour.
14. The N5 claims that on or about February 7, 2022, the Landlord conducted an inspection of the unit and found that the unit had been wilfully and negligently damaged and the unit painted.
15. The N5 states that it can be voided by repairing the damaged property or by paying the Landlord \$2,882.50 within 7 days of the notice. This is based upon the Landlord's estimate dated February 9, 2022 for painting and for drywall and casing repairs. It is the Landlord's submission that this was not done and therefore that the N5 was not voided.

Drywall and door trim

16. The Landlord submitted a photo of a wall behind an external door with dented and cracked drywall with what appears to be one impact point and resulting cracking. CW testified that the damage was significant and was the result of the door being "slammed open." She testified when questioned that she did not think that there was a door stop behind the door.
17. The other photo submitted by the Landlord shows the casing and frame at the base of an exterior door. It appears that approximately half the span was scratched and chewed by a dog.
18. In support of its claim for damage, the Landlord submitted an invoice for \$3,474.75 dated July 21, 2022: repair walls and paint unit less basement (\$3,000.00), replace nosing second floor landing (\$75.00).
19. As the application only claims \$3,390.00 (\$3,000 + tax) which is the portion for paint and wall repair, the amount claimed for the nosing replacement is not considered.

Paint

20. Property Manager Christine Bowins (CW) testified on behalf of the Landlord. She testified that the lease stipulates at clause B15(xi) that if the tenant paints the unit a colour other than offwhite or applies wallpaper or other adhesive film, the tenant is required to pay the cost determined by the landlord for the landlord to repaint to the original neutral colour.

21. Upon move-in, the Tenants were given a paint credit of \$750.00 as the unit had not been repainted after the last tenant vacated the unit. CW testified that the paint colour was not discussed at that time but that it was clear that the unit needed to be a neutral colour upon move-out.
22. In the photos submitted by the Landlord which were taken on February 7, 2022, the kitchen appears to be a neutral colour, the living room walls appear to be a sage green, the bedroom and bathroom a dark blue, and another room has a decorative effect of coloured lines on a neutral background. While there was no documentary evidence to indicate the colour of the walls when the Tenant moved out, it was the uncontradicted testimony of CW that the colours had not been changed.
23. CW testified that the Landlord's invoice for repainting was higher than the paint credit initially given to the Tenants because of the extra work and time involved to cover dark colours and particularly to cover the walls with the decorative effect because they could not be easily covered with a roller coat.
24. VW submitted text messages dated May 21, 2021 between herself and CW into evidence with respect to the paint allowance. CW asks "would you like an allowance to go pick your own colours?" to which VW replies "We were hoping to paint different colours." CW responds that "the builder's paint that we all have isn't great, so I think you picked a good choice."
25. VW also submitted an email dated July 27, 2021 between herself, Aaron Messinger, and CW with 9 photos of the unit as requested to confirm that the unit had been painted by the Tenants. Although the colour of the photos did not reproduce well, the photos show the bathroom, the living room, and bedrooms. CW's response is "looks great!"

Analysis

26. The Landlord's claim for compensation for damage is made pursuant to section 89(1) of the Act:

89 (1) A landlord may apply to the Board for an order requiring a tenant or former 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,

- (a) while the tenant or former tenant is or was in possession of the rental unit, the tenant or former tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant or former tenant wilfully or negligently causes or caused undue damage to the rental unit or the residential complex

27. It appears that the damage to the drywall was caused by the door being opened forcefully and slamming into the wall. CW testified, however, that there was no door stop, and therefore I cannot find that the damage caused was due to wilful or negligent conduct on the part of the Tenants. No compensation will be awarded.

28. It is the Landlord's uncontested evidence that the damage to the painted door frame and casing at floor level was caused by dog claws and by a dog chewing at it. The photos provided by the Landlord are consistent with this assumption. While it might be expected that there would be some claw marks on the trim, I am satisfied that the amount of damage cannot be attributed to ordinary wear and tear and that the door casing would need to be replaced. However, the final invoice submitted by the Landlord lacks detail and does not itemize the repair cost of the drywall or of the replacement of the casing. I will rely upon the February 9, 2022 estimate which was provided for drywall and casing repairs, which is \$250.00.
29. From knowledge of such matters, I find that \$100.00 would be a reasonable cost to repair or replace the door casing along the floor.
30. With respect to the paint, CW's testimony was that the paint colour was not discussed at the time the paint credit was given, but that it was clear to the Tenants that the unit would need to be repainted at their expense at the end of the lease to return it to a neutral colour. The evidence submitted by VW shows that the Landlord was aware that unit had been painted with darker colours and did not inform VW that those colours were unacceptable during the tenancy, but rather that her choice was accepted.
31. It is clear on the evidence presented that the understanding was that the unit was to be repainted at the end of the tenancy, and therefore at the time that the Notice was given, the tenants were not in breach of their lease. Therefore, the painting of the unit is not properly the subject of the N5 Notice and for this reason no compensation can be awarded on this application.
32. I find that VW and MM are jointly responsible for \$100.00 in out-of-pocket costs incurred by the Landlord, as the damage occurred while VW was still a party to this tenancy. Therefore, the Tenant MM shall pay ordered to pay the Landlord 50% of this amount.

It is ordered that:

Victoria Windsor

33. Victoria Windsor's interest in the tenancy terminated as of February 28, 2022, the date Victoria Windsor moved out of the rental unit pursuant to an N15 notice.
34. On the consent of the parties, Victoria Windsor shall pay to the Landlord \$1,225.00 for arrears of rent up to February 28, 2022, which represents 50% of the rent owing to the date that the Tenant vacated the rental unit.
35. On the consent of the parties, Victoria Windsor shall pay to the Landlord the amount set out in paragraph 2 in accordance with the following schedule:

January 15, 2023 and each and every month on the 15 th until May 2023	\$200.00 [\$1,000.00]
June 15, 2023	\$225.00 [\$1,225.00]

36. If Victoria Windsor does not pay the Landlord the full amount owing on or before June 15, 2023, Victoria Windsor will start to owe interest. This will be simple interest calculated from June 16, 2023 at 5.00% annually on the balance outstanding.

Michael Moseley

37. The tenancy between the Landlord and the Michael Moseley is terminated as of June 27, 2022, the date Michael Moseley moved out of the rental unit.

38. Michael Moseley shall pay to the Landlord \$8,771.54. This amount includes rent arrears owing up June 27, 2022, and the Landlord’s application filing fee. The rent arrears Victoria Windsor was ordered to pay the Landlord and the rent deposit and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Michael Moseley. See Schedule 1 for the calculation of the amount owing.

39. Michael Moseley shall also pay the Landlord \$50.00 to compensate the Landlord for the reasonable out-of-pocket expenses incurred by the Landlord to repair or replace the undue damage.

40. If Michael Moseley does not pay the Landlord the full amount owing on or before April 11, 2023, Michael Moseley will start to owe interest. This will be simple interest calculated from April 12, 2023 at 5.00% annually on the balance outstanding.

March 31, 2023

Date Issued

Margo den Haan

Member, Landlord and Tenant Board

15 Grosvenor St, 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 MM must pay as the tenancy is terminated

Rent Owing To Move Out Date	\$12,274.85
Application Filing Fee	\$186.00
Less the amount of the last month's rent deposit	- \$2,450.00
Less the amount of the interest on the last month's rent deposit	- \$14.31
Less the amount of the credit that the Tenant is entitled to	- \$1,225.00
Total amount of rent arrears owing to the Landlord	\$8,771.54