



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

Citation: Gelly v Amuzati, 2023 ONLTB 26005

Date: 2023-03-22

File Number: LTB-L-022265-22

In the matter of: 1-2, 324 CUMBERLAND AVE HAMILTON
ON L8M2A1

Between: Serge Gelly Landlord

And

Alphose Amuzati Tenant

Serge Gelly (the 'Landlord') applied for an order to terminate the tenancy and evict Alphose Amuzati (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 claimed compensation for each day the Tenant remained in the unit after the termination date.

Serge Gelly (the 'Landlord') also applied for an order requiring Alphose Amuzati (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 March 8, 2023.

The Landlord and the Tenant attended the hearing.

Determinations:

1. The Landlord's L2 application is based on an N5 Notice to End your Tenancy for Interfering with Others, Damage or Overcrowding ('N5') served on the Tenant on March 24, 2022 pursuant to section 62 of the *Residential Tenancies Act*, 2006 (the 'Act'). The Landlord states that on February 28, 2022 the Tenant parked his motor vehicle on the grass in front of the rental unit which caused damage to the grass.
2. The Landlord's witness, George Babiarz ('GB') resides on the third floor of the residential complex which is a detached house. GB testified that from his unit, he has a clear view of the front of the house and his attention was drawn to the front of house because he had heard tires squealing and sounds like a car was stuck. GB states that he observed the Tenant's vehicle rocking back and forth on the front yard as it appeared the car was stuck in the ground. GB stated that two kids who were one their way home from school helped get the Tenant's car out of the front yard however the front yard was left with two large ruts in the ground, approximately 4 feet in length.
3. GB submits that he contacted the Landlord the next day to advise of the damage to the front yard.
4. GB testified that the Tenant's vehicle was parked on the front yard for about 2-3 weeks and that while there is parking available within the residential complex, the Tenant parks his vehicle on the front yard.
5. The Landlord testified that grass was damaged as a result of the Tenant's vehicle parked on the front yard and tendered photographs showing the damage.
6. The Landlord also submitted a quote from a landscaping company that stated it would cost \$339.00 to repair the front yard. However, it was later acknowledged that the Landlord himself repaired the damage as he had grass seed in his possession as a result of having seven rental properties and that he and GB pushed the dirt back into the ground and sprinkled grass seed onto the area.
7. The Tenant's witness, Fidel Sebastian ('FS') resides in one of the two bedrooms in the Tenant's unit. FS testified that he did park his car on the front yard and acknowledged that the front yard became damaged. FS testified that he and the Tenant purchased grass seed and fixed the yard one week later. The Tenant submits that a landscaping company never attended to repair the damage as the Tenant had already repaired the area.
8. The Tenant testified that he and FS fixed the grass but also stated that the Landlord has parked his white mini-van with a trailer on the front yard around the same time. The Tenant states that FS parked on the front yard because the Landlord had parked his van and trailer on the driveway blocking any parking and there was no parking left on the street.
9. Based on the evidence and submissions before me, and on a balance of probabilities, I am satisfied 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 or residential complex specifically that the Tenant's occupant had parked his motor vehicle on the front yard which caused damage to the grass.

Relief from eviction:

10. The Tenant stated that he and FS repaired the grass while the Landlord also stated that he and GB repaired the grass. The evidence before me is that the grass was repaired with little, if any, expense incurred as the dirt was pushed back into the ruts, leveled out and grass seed applied. Eviction is a remedy of last resort and I find that given the circumstances, the issues in this case does not warrant eviction. 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 grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

Section 89 – Damage claim:

11. Included in the Landlord's application is for compensation in the amount of \$339.00 for damage to the front yard. In order for an application for compensation for damages made pursuant to section 89(1) of the *Act* to succeed, 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.
12. In this context, the word "property" refers to the physical objects such as walls, ceilings, floors, appliances and fixtures in a residential complex.
13. If all of these factors are met, then the Board can award the Landlord the reasonable cost of repair, or the replacement if it is not reasonable for the damage to be repaired.
14. The Landlord testified that the Tenant damaged the front yard of the residential complex and provided photographs at the hearing which depict the damage to the front yard.
15. With respect to the above noted damage, based on the evidence before me, I find that the undue property damage was as a result of the Tenant's conduct. However, both the Tenant and the Landlord stated they repaired the front yard with little, if any expense. The Landlord stated that he was already in possession of grass seed and he did not retain a landscaping company to repair the damage. Given the circumstances, I find that it would not be reasonable to award any costs for the repair as I am not satisfied there was any cost incurred to repair the front yard.

16. This order contains all of the reasons in this matter and no further reasons will be issued

It is ordered that:

1. The Landlord's eviction of the Tenant is denied as long as the Tenant meets the conditions set out below:
 - (a) the Tenant, another occupant of the rental unit or a person whom the Tenant permitted in the residential complex shall not park a motor vehicle on the front yard.
2. If the Tenant fails to comply with the conditions set out in paragraph 1 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.
3. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
4. If the Tenant does not pay the Landlord the full amount owing on or before March 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 1, 2023 at 5.00% annually on the balance outstanding.

March 22, 2023

Date Issued

Heather Chapple

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.