



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

Citation: Byron Rental Properties Ltd. v Draper, 2023 ONLTB 26636

Date: 2023-03-20

File Number: LTB-L-012631-22

In the matter of: 2, 2123 HONEYWELL AVE
OTTAWA ON K2A0P7

Between: Byron Rental Properties Ltd. Landlord

And

Dorothy Anne Draper Tenant

Byron Rental Properties Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Dorothy Anne Draper (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.

Byron Rental Properties Ltd. (the 'Landlord') also applied for an order requiring Dorothy Anne Draper (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 January 23, 2023.

Dino Giorgio (DG) on behalf of the Landlord, attended the hearing.

As of 9:34 a.m. the Tenant was not present or represented at the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and a partial claim for compensation in the application.
2. The Landlord served the Tenant with a 1st N5 Notice of Termination with a termination date of March 10, 2022. In the notice, the Landlord alleged that as of February 14, 2022, the Tenant has not resolved a hoarding issue and the unit is dirty, has too much garbage; and the floors are completely destroyed and stained from the feces of birds and animals. The Landlord received complaints about the rotting smell of garbage and feces. The Landlord claimed \$2,800.00 for the damages to the property.
3. The Landlord subsequently served the Tenant with a 2nd N5 Notice of Termination with a termination date of March 31, 2022. In the notice, the Landlord alleged that as of March 3, 2022, there remains a hoarding issue in the unit and there is still smell coming from the unit, due to garbage piled in the unit and bird feces on the floor.
4. On a 1st N5 Notice of Termination, the Tenant is afforded an opportunity to void the notice by correcting the behaviour or stopping the activity set out in the notice within seven days. In this particular case, the voiding period is from February 17, 2022 to February 23, 2022.
5. If was the evidence of the Landlord that the Tenant did not void the 1st N5 as the Tenant did not pay the Landlord \$2,800.00 to replace the damaged property. In addition, DG attended the unit on March 3, 2022 and the unit was in the same condition with excessive clutter and garbage and bird and dog feces on the floor.
6. I find that the Tenant did not void the N5 notice.
7. The Landlord submitted into evidence photographs taken on March 7, 2022 of the condition of the unit which shows the excessive clutter, garbage strewn about the unit and the undue damage to the floors, caused by feces and dog urine. DG stated that the Tenant has many birds that defecated everywhere in the unit. The floors were filled with animal feces, stained and dirty; and the floors need to be sanded and varnished.
8. Based on the uncontested evidence before me, I find it more likely than not that the Tenant has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant as the Tenant's unit was filled with garbage, cluttered and not in a state of ordinary cleanliness. I also find that the Tenant has wilfully or negligently caused undue damage to the rental unit by having her pets defecate on the floors which caused undue damage to the floors.
9. In the application, the Landlord claimed \$2,800.00, as the cost the Landlord incurred or will incur to repair or replace the damaged property as follows:

Cleanup needs 2 bins from Capital Junk.....1130 + HST

Sand and varnish floors from Richard Flooring.....800 + HST
Fridge replacement.....550 + HST TOTAL 2800

10. The Landlord seeks the total of \$800.00, plus HST for the cost to repair the floors in the unit. Based on the uncontested evidence before me, I find that this cost is reasonable to repair the flooring in the unit. An order will issue for the amount of \$904.00.
11. The Landlord's claim for the cost for clean up is denied. I say this because the Landlord did not provide evidence that the unit has been damaged by the excessive clutter or the garbage in the unit. I do not find that excessive clutter/garbage in the unit is evidence of actual damage to the unit.
12. The Landlord's claim for the cost to replace the fridge is denied. I say this because in the Landlord's application, and the N5 notice, the Landlord did not provide sufficient detail as to how the Tenant caused undue damage to the fridge and why it needs to be replaced. On the N5 notice, the Landlord alleged that the fridge was not salvageable, but provided no details as to why the fridge was not salvageable. The Landlord should have provided this detail on the application and in the notice.
13. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. I also considered that the Landlord indicated that on December 1, 2022 the Tenant and the Landlord signed a Form N11 Agreement to Terminate the Tenancy with a termination date of January 31, 2023.
14. Because an eviction order shall issue, pursuant to section 89(2) of the Act, the Board is required to set-off against the amount required to be paid by the Tenant for the damage, the amount of any rent deposit or interest on the rent deposit that would be owing to the Tenant on termination.
15. The Landlord collected a rent deposit of \$1,095.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$48.10 is owing to the Tenant for the period from September 1, 2019 to January 23, 2023. These amounts total \$1,143.10, which shall be set-off against the compensation awarded to the Landlord of \$904.00. This results in a credit of \$239.10 to the Tenant.
16. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
17. The application cost shall be deducted from the credit of \$239.10, which leave a credit to the Tenant in the amount of \$53.10.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of April 7, 2023. The Tenant must move out of the rental unit on or before April 7, 2023.
2. If the unit is not vacated on or before April 7, 2023, then starting April 8, 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 April 8, 2023.
4. The Tenant shall pay to the Landlord \$904.00, which represents the reasonable costs of repairing the damaged property.
5. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
6. The amount that the Tenant owes the Landlord \$1,090.00 is set off against the last month rent deposit and interest on the deposit.
7. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

**March 27, 2023 Date
Issued**

Debbie Mosaheb
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 October 8, 2023 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.