



Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

Citation: Derkach v Maclean, 2023 ONLTB 25564

Date: 2023-03-07 **File Number:**
LTB-L-010167-22-RV

In the matter of: Basement Unit, 27 FLEMPTON CRES SCARBOROUGH
ON M1K3B3

Between: Michael James Derkach Landlord

And

Ron Maclean Tenant

2023 ONLTB 25564 (CanLII)

Review Order

Michael James Derkach (the 'Landlord') applied for an order to terminate the tenancy and evict Ron Maclean (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.

Michael James Derkach (the 'Landlord') also applied for an order requiring Ron Maclean (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 resolved by order LTB-L-010167-22 issued on January 25, 2023.

On February 27, 2023, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

A preliminary review of the request was completed without a hearing.

Determinations:



1. On the basis of the submissions made in the request, I am not satisfied that there is a serious error in the order or that a serious error occurred in the proceedings.
2. The Tenant submits it is a serious error to order the Tenant to pay the application fee since the eviction portion of the Landlord's application was dismissed. I disagree. The decision award the application fee is an exercise of discretion. Generally, the successful applicant is entitled to its cost of filing the application. While the eviction portion of the Landlord's application was dismissed, the Landlord was successful in obtaining an award of \$500.00 for the reasonable costs of replacing or repairing the damaged property. Accordingly, the decision to award the Landlord its filing fee was a reasonable exercise of discretion which does not amount to a serious error and shall not be interfered with.
3. The Tenant submits that the presiding adjudicator's finding of fact with respect to damage to the floor was incorrect given the evidence of a flood that occurred in the rental unit. The January 25, 2023 order considers the evidence of the flood at paragraph 23. However, the presiding adjudicator was not satisfied that the flood likely caused the scratches to the floor. The order further identifies and describes some of the relevant evidence the adjudicator considered when she made her findings of fact. For example, the adjudicator considers the photographic evidence, the extent of the damage and the Landlord's credible and uncontradicted testimony that the damage to the floor was not present prior to the Tenant moving in. The presiding adjudicator's finding that the Tenant caused undue damage to the floor is therefore reasonable and supported by the evidence.
4. I would not interfere with the assessment of the evidence by the presiding adjudicator, who was in the best position to assess the credibility of the parties and had the opportunity of hearing the evidence in its totality.
5. The Tenant submits the application is defective because it claims the Landlord is not holding a last month's rent deposit from the Tenant. However, the Tenant does not explain how this amounts to a serious error in the order or in the proceedings. The order makes no determination on the last month's rent deposit. Whether there is a last month's rent deposit has no bearing on the outcome of the order. Accordingly, this is not a serious error.
6. The Tenant submits that the award of \$500.00 for the damage to the floor is unjust. The issue is whether the damage award represents the reasonable costs to repair or replace the damaged property (s.89(1) of the *Residential Tenancies Act, 2006*). In arriving at her determination, the presiding adjudicator considers the Landlord's invoice, the parties' testimony, the pictures of the damage, and the severity of the damage in arriving at this determination. The damage award is reasonable, and the presiding adjudicator provides sufficient reasons to explain how they arrived at the amount.
7. The Tenant has accordingly not shown that a serious error may exist in the January 25, 2023 order, or that a serious error may have occurred in the proceedings. The request to review the order must be denied.



It is ordered that:

1. The request to review order LTB-L-010167-22, issued on January 25, 2023, is denied.
2. The order is confirmed and remains unchanged.

March 7, 2023

Date Issued

Khalid Akram

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor Toronto
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.