



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

Citation: Sabourin v Patenaude, 2023 ONLTB 20673

Date: 2023-02-16

File Number: LTB-L-030938-22

In the matter of: 47 Anthony Street
Cornwall ON K6H5J8

Between: Richard Sabourin Landlord

And

Jenna Patenaude Tenant

Richard Sabourin (the 'Landlord') applied for an order to terminate the tenancy and evict Jenna Patenaude (the 'Tenant') because:

- the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

Richard Sabourin (the 'Landlord') also applied for an order requiring Jenna Patenaude (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. The Landlord also claimed compensation for each day the Tenant remained in the rental unit after the termination date.

This application was heard by videoconference on February 8, 2023.

The Landlord, the Landlord's Legal Representative, Marie Beaupre, and the Tenant attended the hearing.

The Tenant spoke with Duty Counsel prior to the hearing.

Determinations:

1. As a preliminary issue the Landlord's Legal Representative requested to amend the application to include per diem compensation from the termination date, as it inadvertently not ticked. The amendment was granted.

Own Use

2. The Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for his daughter for a period of at least one-year. I say this for the reasons that follow.
3. The Landlord's application is based on a notice of termination issued pursuant to s.48 of the *Residential Tenancies Act, 2006* (the 'Act') alleging the Landlord wishes his daughter to live in the rental unit. The notice is dated April 20, 2022 and sets out a date for termination of the tenancy of June 30, 2022.
4. The Tenant was in possession of the rental unit at the time the application was filed.
5. The monthly rent was \$1,000.00; it increased to \$1,025.00 on January 1, 2023.
6. The Tenant was required to pay the Landlord \$7,294.60 in daily compensation for use and occupation of the rental unit for the period from July 1, 2022 to February 8, 2023.
7. Based on the Monthly rent, the daily compensation is \$33.70. This amount is calculated as follows: \$1,025.00 x 12, divided by 365 days.
8. Since the termination date in the notice of termination, the Tenant paid the Landlord \$8,050.00 in rent; the rent is paid in full to February 28, 2023.
9. The Landlord collected a rent deposit of \$1,000.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit is owing to the Tenant for the period from November 1, 2018.
10. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.
11. The Landlord has compensated the Tenant an amount equal to one month's rent by June 30, 2022. The Tenant was given a cheque on June 26, 2022 but has declined cashing it.
12. The Landlord has not served a previous N12 notice in the past two years.
13. A declaration from the Landlord's daughter, Lindsay Sabourin, was filed with the application, The Landlord's Legal Representative filed an amended declaration on December 5, 2022; the amended version corrects the defects in the original. The declaration reflects that Lindsay Sabourin intends on living in the rental unit for longer than one year and is made in good faith and for no other or improper purpose.

14. There is no dispute that the Landlord's daughter intends on moving into the rental unit; the issue is when the tenancy will terminate.
15. The Landlord testified that his daughter has a newborn, and his wife works from home; it has been very stressful with everyone living under the same roof. His daughter needs a place of her own; the rental complex has been in the family for three generations and his daughter wants to live there. Originally the Landlord was seeking termination on February 28, 2023, but later changed the date to March 31, 2023. The Tenant has known she was going to have to move for almost a year, there is no reason to delay any longer.
16. The Tenant testified that she cannot be out by the end of February, she needed more time. The Tenant requested until the end of June to find a place within her price range, as she is a single mother, and allow her autistic son to finish the school year.
17. 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 postpone the eviction until April 30, 2023 pursuant to subsection 83(1)(b) of the Act. I accept that as a single parent with an autistic child, a quick move is not feasible. However, the Landlord is also in a stressful living situation that is affecting his family; the stress he was undergoing was evident in his voice/testimony. Therefore, I find allowing the Tenant approximately 2 ½ months to vacate is more reasonable under the circumstances; it allows the Tenant some extra time without overly prejudicing the Landlord.

Compensation for damages

18. For the reasons that follow, I find 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.
19. The Landlord is seeking \$1,695.00 as the reasonable costs he will incur to repair the damages. The damages are:
 - Hole behind front door; \$150.00 to patch and repair,
 - Bannister railing broken; \$150.00 to repair/replace.
 - Master bedroom ceiling fan removed and in pieces; \$500.00 to have someone put it back together and reinstall it.
 - The Tenant removed the carpet and was going to have her father put laminate flooring in its place. This was not done; the Tenant covered the area with mac-tack. It will cost \$700.00 to replace the carpeting.
20. The Landlord testified that he discovered the damages just prior to when he served the N12 notice of termination and filed the application; the application was filed on June 2, 2022. He did not take pictures at the time and did not do another inspection as he felt it best to avoid contact with the Tenant after he served the notice.

21. The Tenant did not dispute the damages but testified that everything has since been fixed. She did not notify the Landlord when they were fixed because she did not realize until she received the application that he was pursuing them. The Tenant also testified that she had permission from the Landlord to remove the carpet as long as she incurred the costs; she has texts but they are not in evidence. The carpeted area was replaced with peel and stick tile.
22. The Tenant did not dispute the damages, her position is that everything that required repair has been done. As there is no evidence to the contrary, the Landlord did not do a follow-up inspection and based on his own testimony has not been in the rental unit since the application process started, I accept the Tenant's testimony in regards to the hole behind the door, the banister, and the fan all being fixed; therefore, no compensation is owing to the Landlord for any repair work.
23. In respect of the carpeting that was removed by the Tenant, I find the Landlord was aware of its removal, this is supported by the application itself and his testimony; therefore, I find the Tenant did not willfully or negligently cause damage. As for the material the carpet was replaced with, I accept the Tenant's testimony that it was replaced with peel and stick tile not plastic mac-tac; the Landlord presented no evidence to the contrary. Therefore, this part of the application is dismissed.
24. Based on all the above, I find the Landlord is not entitled to compensation for the damages that occurred as they have since been repaired. Any recourse for the Landlord if this is not the case, is a Request for Review.
25. This order contains all the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before April 30, 2023.
2. If the unit is not vacated on or before April 30, 2023, then starting May 1, 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 May 1, 2023.
4. The one-month compensation owing to the Tenant shall be applied to the month of March 2023.
5. The last month rent deposit shall be applied to the month of April 2023.
6. As the rent is paid to February 28, 2023, and March and April rent are covered as above, the Tenant does not owe the Landlord any daily compensation for use of the unit up to the termination date in this order.

7. If the Tenant does not vacate the rental unit on or before April 30, 2023, the Tenant shall pay the Landlord compensation of \$33.70 per day until the date the Tenant moves out of the rental unit.
8. The Landlord shall pay the Tenant \$62.08 for the interest owing on the last month rent deposit to February 8, 2023. If the Landlord does not make this payment on or before March 31, 2023, the Landlord will start to owe interest. This will be simple interest calculated at 5% per year on the outstanding balance.

February 16, 2023

Date Issued

Diane Wade

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 November 1, 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.