



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

Citation: Hollyburn Properties Ltd. v Fawcett, 2023 ONLTB 18258

Date: 2023-02-09

File Number: LTB-L-015599-22

In the matter of: 209, 235 BAY ST OTTAWA
ON K1R5Z2

Between: Hollyburn Properties Ltd. Landlord

And

Gabrielle Fawcett Tenant

Hollyburn Properties Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Gabrielle Fawcett (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.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

Hollyburn Properties Ltd. (the 'Landlord') also applied for an order requiring Gabrielle Fawcett (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 25, 2023.

Only the Landlord's Legal Representative, Mark Ciobotaru, the Landlord's Resident Manager, Rhonda Frost and the Landlord's Property Manager, Alex Kasis attended the hearing.

As of 11:25 am, the Tenant 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.

Preliminary Issue:

1. The Landlord requested an amendment to the L2 application to amend the damage amount requested in the L2 application from \$6,224.00 to \$1,774.60. This amount represents \$1,200.00 for the replacement of the patio door and \$574.60 for the cost the Landlord incurred for pest control treatments.
2. I consented to the request to amend the L2 application. There is no prejudice to the Tenant to allow the Landlord to amend to a lesser amount as originally requested on the L2 application.

Background:

1. The Tenant was in possession of the rental unit when this application was filed on March 17, 2022.
2. The Tenant vacated the rental unit on June 21, 2022.

Determinations:

3. The Tenant is no longer in possession of the rental unit. Therefore, I do not need to consider the Landlord's notice of termination, and the application will proceed on a damage only claim.
4. As explained below, the Landlord has proven on a balance of probabilities the claim for compensation in the application related to the replacement of the patio door.
5. As explained below, the Landlord has not proven on a balance of probabilities the claim for compensation in the application related to the Pest Control treatment charges. Therefore, I will not be considering the Landlord's claim in the amount of \$574.60.
6. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Compensation for damages

7. 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. The Tenant damaged the patio doors inside the rental unit.

8. The Landlord has incurred reasonable costs of \$1,200.00 to repair and replace the damaged patio doors.

Landlord's Uncontested Evidence

Patio Doors

9. The Landlord's Resident Manager, Rhonda Frost testified that she was the one who was dealing with the Tenant regarding the patio door. She states they had received a quote of \$5500.00, which the Landlord thought was high. After receiving the quote, the Landlord located two patio doors that he had in stock.
10. She testified that it took the Landlord's staff eight hours to replace the patio doors and tracks.
11. She testified the amount of money the Landlord is seeking for the patio doors is \$1,200.00. This cost represents the cost of each door at \$500.00 and \$200.00 for labour for eight hours.
12. The Landlord provided photographs of the damaged patio door and the damaged tracks. The picture of the patio door shows the glass being broken and the picture of the tracks show the tracks bent and damaged.
13. The Landlord's Resident Manager, Rhonda Frost testified that the doors would have had to have extreme force to them to break the glass.

Pest Control

14. The Landlord's Resident Manager, Rhonda Frost, testified that on January 26, 2022, she did an inspection of the rental unit. At the time of inspection Orkin Pest Control was also with her to conduct a pest control treatment inside the rental unit.
15. She testified the general state of the rental unit was very bad, there was so many belongings inside the rental unit it was hard to move around, the sink was full of dirty water, food was left on the stove and cockroaches were on the walls and the ceilings.
16. The Landlord provided photographs that showed the rental unit in an extremely cluttered state, visible cockroaches, broken cupboard doors, garbage and debris and dirty ashtrays. The pictures show the kitchen sink filled with dirty water, dish gloves and other floating objects. The Landlord's Resident Manager, Rhonda Frost testified she took these photos on January 26, 2022.
17. She testified that after the inspection she spoke to the Tenant about the unsanitary state of the rental unit and the Tenant assured her that she would clean the rental unit. and have it properly prepared for the next treatment.

18. She testified that Orkin also spoke to the Tenant on that day and advised the Tenant that she needed to clean and prepare the rental unit as he could not spray if the rental unit was in that condition and that the state of the rental unit was causing the cockroaches.
19. She testified that Orkin had to attend the rental unit on three to four separate occasions and the rental unit was never properly prepared to be able to do a complete spray.
20. The Landlord provided a copy of a report from Orkin, the report shows the date of service was January 26, 2022, at approximately 2:20 pm. The comments on the report state "Apartment 206 high activities of German cockroaches in the kitchen area, under sink, behind stove and fridge, under coffee machine, unit has sanitation issues, dishes were dirty, and sink was filled with dirty water. The report indicated that Orkin would do a follow up in two weeks.
21. She testified Orkin came back to the rental unit again approximately 3-4 weeks later to attempt another treatment and only could spray certain areas as other areas were not prepared.
22. She testified the Landlord provided the Tenant with a copy of a Preparation Sheet from Orkin for each pest control treatment which outlined what was required by the Tenant to prepare for the treatment.
23. The Landlord provided a copy of an invoice dated April 12, 2022, from Orkin in the amount of \$574.60. This cost represents spraying for cockroaches.
24. The Landlord's Resident Manager, Rhonda Frost, testified that is normal practice of the Landlord to not charge the Tenant for pest control treatments, however, as most pest control treatments conducted are for uncleanliness of the rental unit. She states the condition of the Tenant's rental unit was above just being unclean and was the worst she had seen, and it was very unsanitary and unhealthy.

Analysis

25. Under section 89 of the Act, a Landlord may apply to the Board for an order requiring a tenant to pay the reasonable costs that the Landlord has incurred or will incur for the repair of or, where repairing is not reasonable, the replacement of the damaged property, if the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex wilfully or negligently causes undue damage to the rental unit or residential complex and the tenant is in possession of the rental unit.
26. I accept the uncontested evidence and testimony of the Landlord that the Tenant has wilfully or negligently caused undue damage to the patio doors.
27. I am granting the Landlord's request for an order requiring the Tenant to pay the Landlord \$1,200.00, because I am satisfied based on the Landlord's uncontested evidence that this

represents the reasonable out of pocket expenses that the Landlord has incurred to repair and replace the patio doors.

28. I also find that it was reasonable for Landlord to minimize the costs by hiring their own staff to conduct the repairs, \$200.00 for eight hours is reasonable. I also find it reasonable that after the Landlord received the quote for the patio doors, he recognized that it was high and looked at cheaper alternatives to conduct the repairs.
29. I find the charges related to Pest Control treatments are not for the repair or replacement of damaged property. Rather, the costs are associated with substantial interference with the landlord's reasonable enjoyment or lawful right, privilege or interest, and the Landlord incurred out-of-pocket expenses as a result of the conduct. This type of out-of-pocket expense can be claimed under section 88 (1) of the Act. Therefore, I am denying the Landlord's claim under section 89 of the Act.

It is ordered that:

1. The Tenant shall pay the Landlord the amount of \$1,200.00, which represents the reasonable costs for replacing and repairing the damaged property.
2. The Tenant shall also pay the Landlord \$186.00 for the cost of filing this application.
3. If the Tenant does not pay the Landlord the full amount owing on or before February 23, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 24, 2023 at 5.00% annually on the balance outstanding.

February 9, 2023

Date Issued

Trish Carson

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.

