



**Order under Section 69 / 88.2
Residential Tenancies Act, 2006**

Citation: Kayani v Clarke, 2023 ONLTB 17920

Date: 2023-02-03

File Number: LTB-L-002800-22

In the matter of: 342 PANHELLENIC DR
MISSISSAUGA ON L5W0B9

Between: Sohail Kayani Landlord

And

Tracy Clarke Tenant

Sohail Kayani (the 'Landlord') applied for an order to terminate the tenancy and evict Amia Clarke, Jayreese Clarke, Tracy Clarke and Tyreq Clarke (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. And, 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.

The Landlord also applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

The Landlord also applied for an order requiring 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.

This application was heard by videoconference on January 25, 2023. Only the Landlord and their spouse, Iram Kayani, attended the hearing. As of 10:59am, the Tenants were not present or represented although properly served with notice of the hearing by the Board. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

The application is amended to reflect that only the named Tenant, Tracy Clarke, is a Tenant for the purpose of the application before the Board. The remaining named persons were occupants of the rental unit.

Determinations:

1. The Tenant was in possession of the rental unit when the application was filed.

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2. The Tenant vacated the rental unit on April 5, 2022 as a result of another Board order being enforced by the Sheriff. As a result, the Landlord's application proceeded only on the basis of the unpaid damages and utility costs as outlined in the L2 application.
3. On or about the beginning of January 2021 the Tenant contacted the Landlord because they were having issues with the furnace not working. Upon inspection of the furnace and by the admittance of the Tenant, there was damage to the panel on the furnace and the filter was clogged as a result of the Tenant not changing it as she had agreed to do.
4. The Tenant explained that her children were playing close to the furnace and ended up denting the panel. As a result of the damage and the failure to change the filter, the regulator was damaged and the element overheated which required the entire furnace to be replaced.
5. The Landlord paid \$2,600.00 to replace the furnace. Based on the uncontested evidence of the Landlord I find that the Tenant and/or their occupants caused damage to the furnace which required that it be replaced. The damage was undue as a result of the negligent conduct of the Tenant and her occupants. I find the cost of \$2,600.00 reasonable to replace the furnace. As a result, the Tenant will be required to reimburse the Landlord for the cost of the furnace replacement.
6. The Tenant did not pay the utilities which they were required to pay under the terms of their tenancy agreement for the period of June 5, 2021 to December 31, 2021 which resulted in the Landlord having to pay the costs. The Region of Peel waster/wastewater bill of \$1009.93 was charged to the Landlord's tax roll for the Tenants failure to pay the utility.
7. In addition, I find that the Tenant failed to pay the hot water heater rental charge from Reliance for the period of December 2, 2021 to February 1, 2022 in the amount of \$75.45. The Tenant was required to pay this amount under the terms of the tenancy agreement and they failed to do so which resulted in the Landlord having to pay for it.
8. Based on the undisputed evidence of the Landlord, I find that the Tenant is responsible to reimburse the Landlord for their reasonable out-of-pocket expenses as claimed in the amount of \$1,085.38 for the Tenants failure to pay the utility costs.
9. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

It is ordered that:

1. The Tenant shall pay to the Landlord \$1,085.38, which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the unpaid utility costs.
2. The Tenant shall pay to the Landlord \$2,600.00, which represents the reasonable costs of replacing the damaged furnace.
3. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
4. The total amount the Tenant owes the Landlord is \$3,871.38.

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5. If the Tenant does not pay the Landlord the full amount owing on or before February 14, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 15, 2023 at 5.00% annually on the balance outstanding.

February 3, 2023**Date Issued**

Terri van Huisstede
Member, Landlord and Tenant Board15 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.

