



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

Citation: BRAEMAR COTTAGES 2429414 ONTARIO INC. v MACKENZIE, 2023 ONLTB 15773
Date: 2023-01-23
File Number: CEL-96016-20 /LTB-L-077142-22-RV

In the matter of: 347 ELGIN STREET
PORT ELGIN ON N0H2C0

Between: ANTHONY JOSEPH HILL Landlord
BRAEMAR COTTAGES 2429414 ONTARIO
INC.

And

BRAEDEN MACKENZIE Tenants
TODD MACKENZIE

Review Order

File CEL-96016-20 has been moved to the Landlord and Tenant Board's new case management system, the Tribunals Ontario Portal. The new file number is LTB-L-077142-22.

ANTHONY JOSEPH HILL and BRAEMAR COTTAGES 2429414 ONTARIO INC. (the 'Landlord') applied for an order to terminate the tenancy and evict BRAEDEN MACKENZIE and TODD MACKENZIE (the 'Tenants') because:

- the Tenants, another occupant of the rental unit or someone the Tenants 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 Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully or negligently caused damage to the premises.

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

The Landlord also applied for an order requiring the Tenants 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 Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex.

This application was resolved by order CEL-96016-20 issued on October 20, 2022.

On December 9, 2022, the Landlord requested a review of the order



The Landlord's request to review was heard by videoconference on January 10, 2023.

Only the Landlord, Anthony Hill, and the Landlord's legal representative, Jacqueline Armstrong, attended the hearing. The Tenants were served with the Notice of Hearing by mail to the Tenant's last known address; however, the Notice of Hearing and information package were returned to the Board. The Landlord provided evidence that they emailed the L2 application as amended to the Tenant's email address together with a reference to the upcoming hearing on January 10, 2023. The Landlord had no response from the Tenants. The Tenants did not attend the hearing. There is nothing in the Board record indicating that the Tenants requested an adjournment of the hearing. As such, the hearing proceeded based on the Landlord's evidence only.

Determinations:

1. Based on the uncontested evidence before me, I am satisfied that the Landlord was not reasonably able to participate in the proceedings because the Landlord did not receive the Notice of Hearing.
2. The Landlord's request to review was granted and the Landlord's application was heard de novo.

L2 application:

3. The Landlord's application proceeded as amended. The Landlord served the amended application on the Tenants and filed the Certificate of Service with the Board on January 3, 2023.
4. The Tenants were in possession of the rental unit on the date the application was filed.
5. The Tenants vacated the rental unit after the application was filed. As such, the application proceeded with respect to the Landlord's claim for reasonable out-of-pocket expenses the Landlord has incurred or will incur to repair or replace undue damage to property.
6. In the original application the Landlord claimed out of pocket costs in the amount of \$3,390.00 for damage to the front door.
7. After the Tenants vacated the rental unit, the Landlord was able to assess the actual damage the Tenants caused to the rental unit. The Landlord assessed those costs to be \$14,489.90. As such, as noted above, the Landlord amended the application and served the amended application on the Tenants. The Landlord re-served the amended application on the Tenants on January 3, 2023.
8. The Landlord presented evidence of the damage caused by the Tenants and their dog. The damage included damage to the front door, which had to be replaced. The cost of replacing the door was \$3,390.00. The Tenant's dog further damaged the leather furniture which had to be replaced. The cost of replacing the furniture was \$7,899.90. The floors were badly damaged and had to be revarnished. The cost of revarnishing the floors was \$2,500.00. The window trim needed to be repaired at the cost of \$700.00.
9. Based on the uncontested evidence before me, I am satisfied that the Tenants caused undue damage to the premises and the Landlord's out of pocket expenses to repair the damage amount to \$14,489.90.



10. The Landlord also incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
11. The Landlord also requested representation costs in the maximum amount, and costs of the day for the Tenant's failure to attend the review hearing.
12. The Board has published a guideline on costs (Guideline #3) in order to inform landlords and tenants how the Board normally approaches the issue. It is not binding on me but I find it informative and choose in this instance to follow it. Essentially the guideline states that the only costs that will normally be awarded are the filing fee paid by a successful applicant. The Landlord has already been awarded that fee in this order.
13. The difficulty I have with this request for costs is that the Landlord is requesting that the Tenants pay for their legal representation because the Landlord had to hire a lawyer to pursue this matter. That is not what this remedy is for. Costs are meant to compensate a party for unreasonable behaviour of the other party during the course of the proceedings, such causing undue delay. The Board record does not show that the Tenants behaved unreasonably during the proceedings. There was no evidence before me as to why the Tenants did not attend the review hearing. If the Tenants behaved unreasonably during the course of the tenancy, as the Landlord indicated, that is a matter to be addressed by an appropriate application filed with the Board, not by a request for representation costs. As such, the Landlord's request for costs shall be denied.

It is ordered that:

1. The request to review order LTB-L-077142-22 issued on October 20, 2022 is granted. The order is cancelled and replaced with the following order.
2. The Tenants shall pay to the Landlord \$14,489.90, which represents the reasonable costs of repairing the damage and replacing the damaged property.
3. The Tenants shall pay to the Landlord \$186.00 for the cost of filing the application.
4. The total amount the Tenants owe the Landlord is \$14,675.90.
5. If the Tenants do not pay the Landlord the full amount owing on or before March 31, 2023, the Tenants will start to owe interest. This will be simple interest calculated from April 1, 2023 at 5.00% annually on the balance outstanding.

March 6, 2023
Date Issued

Jana Rozehnal
Member, Landlord and Tenant Board



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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.