



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

Citation: GALLORO v OMWUMERE, 2023 ONLTB 15134

Date: 2023-01-11

File Number: LTB-L-038497-22

In the matter of: MAIN FLOOR, 20 LEDUC STREET
TORONTO ONTARIO M9W2A7

Between: FILIPPO GALLORO Landlord

And

BARBARA OMWUMERE Tenant

FILIPPO GALLORO (the 'Landlord') applied for an order to terminate the tenancy and evict BARBARA OMWUMERE (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.

This application was heard by videoconference on January 9, 2023.

The Landlord, assisted by his brother-in-law, V. Furlano (VF') and the Tenant, assisted by her son, M. Omwumere ('MO') attended the hearing. VF indicated that the Landlord's command of English was too limited for him to properly testify in the hearing and, as VF had knowledge of the matters in issue, would testify and act on behalf of the Landlord.

Determinations:

1. The Landlord claimed \$125.00 for the cost to repair a latch on a window allegedly damaged by the Tenant or another occupant of the rental unit. The Tenant denied having damaged the latch and alleged that the problem with the window was attributable to water damage in the surrounding wall, likely attributable to a radiator leak in the unit above the Tenant's unit.
2. The Tenant's son, MO, referred in the hearing to a number of photos of the subject window and adjoining wall. (Refer Exhibits 1 through 4, being Tenant photos numbered 3, 2, 4 and 7 respectively). The window is large. The portion of the window in issue is the lower portion, being a framed part of the window designed to either open inwards or open by sliding upwards.
3. MO testified that the upper frame of this portion of the window had developed a curve, caused by pressure from expansion of the wall into which the window was set. As a result of this curve, the upper frame of the window could not close flush with the rest of the

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window. The latch was not itself broken but, rather, non-functional as the two portions of the window could not meet.

4. MO testified that, on the request of the Landlord, MO and the Landlord had consulted with a contractor recommended by the Landlord about the problem with the window. MO testified that the contractor had told MO that the problem with the window was not attributable to any wrongdoing on the part of the Tenant. The contractor provided an estimate of \$125.00 to repair the window. This is the amount sought by the Landlord in this application.
5. No evidence was provided as to what exactly the contractor identified as the problem with the window or whether the contractor attributed any difficulty to water damage or pressure from the surrounding wall.
6. I reviewed the photos referenced by MO. There was clearly cracking in the paint in a portion of the wall beside the window but no express sign of water or water staining. I could not clearly confirm, from the photos, that the frame of the window itself had a curve.
7. MO testified that he had been told by the tenants occupying the unit above the Tenant's unit that there had been a leak in their radiator, located directly above the subject window. There was no indication as to how much water had leaked and no indication that those tenants had raised any issue about the leak with the Landlord. VF testified that the Landlord had not been told about any such leak by those tenants.
8. There was some dispute about whether the latch itself was broken or whether the 'latch problem' resulted from a warped window. The Landlord claimed that the \$125.00 pertained only to a broken latch. MO claimed that the \$125.00 pertained to the window itself.
9. I find, as follows, that it is more likely than not that the contractor's estimate referred to a broken latch rather than to necessary replacement of a window.:
 - a) I was not able to determine, from the photos, that the window in fact curved or that the window had been impacted by water leakage from water damage;
 - b) MO acknowledged that he did not have expertise in construction work so that his conclusions about the cause of the window problems were based on his own observations of the cracked paint;
 - c) The Tenant testified that, while there were problems with the window, the latch itself was broken;
 - d) VF acknowledged that the contractor who had been consulted by the Tenants was a contractor used by the Landlord. He testified, however, from his own experience in construction and with this contractor, that the \$125.00 estimate was more consistent with the cost to replace a latch mechanism than with the cost to replace a window; and
 - e) I concur with VF's observation that the \$125.00 cost is more consistent with the repair to a latch than with replacement of the window, a sizeable vinyl window.

10. In that I have found that the latch was broken, I must determine whether it is more likely than not that the break was caused by some sort of action taken by the Tenant or an occupant of the unit. The Tenant and MO provided no explanation as to how the alleged water damage to the walls could have resulted in the latch itself being broken. I find, in the absence of any other explanation, that it is more likely than not that the latch was broken by some sort of action of the Tenant or occupant, regardless of whether there were other issues with the window
11. The Landlord requested that the Tenant be ordered to pay the \$125.00 or that the tenancy be terminated. I do not consider that the Tenant's failure to pay the \$125.00 to date warrants an order for termination of the tenancy but I do find that the Tenant should pay the Landlord the \$125.00 as compensation for the latch which must be repaired.
12. 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 grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant pays the Landlord \$125.00 on or before January 31, 2023.
2. If the Tenant fails to comply with the condition set out in paragraph 1 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.
3. The Tenant shall also pay to the Landlord \$201.00 for the cost of filing the application.
4. The total amount the Tenant owes the Landlord is \$326.00.
5. If the Tenant does not pay the Landlord the full amount owing on or before January 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 1, 2023 at 5.00% annually on the balance outstanding.

January 18, 2023

Date Issued

Lynn Mitchell

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.

