



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

Citation: Guragain v Genereaux, 2023 ONLTB 13801

Date: 2023-01-09

File Number: LTB-L-028922-22-RV

In the matter of: 8 CYPRESS DR
Belleville ON K8N0J6

Between: Harihar Guragain\n Mira Guragain Khanal Landlord

And
Tenant

Review Order

Harihar Guragain and Mira Guragain Khanal (the 'Landlords') applied for an order to terminate the tenancy and evict Matt Richard Genereaux (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 Landlords also claimed compensation for each day the Tenant remained in the unit after the termination date.

The Landlords also applied for an order requiring the Tenant to pay the Landlords' 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 resolved by order LTB-L-028922-22 issued on November 1, 2022.

On November 22, 2022, the Landlord requested a review of the order. On November 28, 2022 interim order LTB-L-028922-22-RV-IN was issued.

This hearing was heard by videoconference on December 20, 2022.

Only the Landlord's Legal Representative Melanie van Aarde and the Landlords attended the hearing.

2023 ONLTB 13801 (CanLII)



As of 9:23 a.m., 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 Landlords' evidence.

Determinations:

Review Hearing:

1. The Landlords' request for review is on the basis that there is a serious error in the order or the proceedings. The Landlords submit that since the grounds for the second N5 notice of termination were not met, the presiding Member should have considered termination of the tenancy based on the first N5 notice of termination.
2. At the review hearing, the Landlord's Legal Representative submitted that the first N5 notice of termination was valid and not voided but the presiding Member failed to grant eviction based on the first N5 notice of termination as the L2 application was filed with the Board on May 25, 2022 and the first N5 notice of termination's termination date was within the timelines stipulated pursuant to the *Residential Tenancies Act, 2006* (the 'Act').
3. Pursuant to subsection 69 of the *Act*:

69(1) A landlord may apply to the Board for an order terminating a tenancy and evicting the tenant if the landlord has given notice to terminate the tenancy under this Act or the *Tenant Protection Act, 1997*.

(2) An application under subsection (1) may not be made later than 30 days after the termination date specified in the notice.

4. The Landlord's Legal Representative and the Landlords submit that the presiding Member did not turn his mind to the provisions in the *Act*, particularly subsection 69. Given the circumstances, I am satisfied that the presiding Member did err by not considering termination of the tenancy pursuant to the first N5 notice of termination.
5. Based on the evidence and submissions at the review hearing and for the reasons stated above, I am satisfied that there was a serious error in law in the order issued November 1, 2022 as the presiding Member did not consider termination of the tenancy in relation to the first N5 notice of termination and I therefore grant the Landlord's request for a review. The hearing of the Landlord's application proceeded *de novo* (anew).

L2 Application:

6. The Landlords' application is for termination of the tenancy pursuant to two N5 notices of termination. The first of which was served on the Tenant on April 27, 2022 and alleges that the Tenant or someone visiting or living with the Tenant has wilfully or negligently damaged the rental unit or residential complex. The Landlords indicated the Tenant had 7 days to correct the identified problems by paying the Landlords \$5,000.00 which is how much the Landlords estimated it would cost to replace the damaged property if it was not reasonable to repair it.



7. The first N5 notice of termination also alleged that the Tenant's behaviour or the behaviour of someone visiting or living with the Tenant has substantially interfered with the Landlords reasonable enjoyment of the residential complex and/or lawful rights, privileges or interests and has a termination date of May 17, 2022. The L2 application was filed on May 25, 2022.
8. The Landlord Harihar Guragain ('HG') testified that the Tenant had damaged the refrigerator. HG stated that he purchased the refrigerator in 2018 and at that time, there was no damage to it. HG testified that when he spoke to the Tenant on April 20, 2022, the Tenant admitted that he had damaged the refrigerator. Photographs tendered at the hearing depict damage as a large dent in the refrigerator door.
9. HG testified that the laundry room door had been damaged by the Tenant. Photographs tendered at the hearing depict a door that appears to have been punched in causing a hole in the door.
10. HG submitted a copy of the lease agreement which stated that smoking was not permitted in the rental unit. HG testified that he smelled smoke while in the rental unit on April 10, 2022 and tendered a number of photographs at the hearing that also showed cigarette papers, lighters, cigarettes, tobacco or another substance on tables, a used bong in the kitchen and ashtrays on the tables in the rental unit.
11. HG submitted that due to the heavy smell of smoke in the rental unit, it would require a deep clean to rid the smell of smoke from the rental unit. As well, HG submitted that the Tenant was using the basement as a woodworking workshop without his permission.
12. HG testified that the Tenant did not pay the requested \$5,000.00 for damages as set out in the N5 notice nor did he correct his behaviours and therefore, the Tenant did not void the first N5 notice of termination.
13. The second N5 notice of termination was served on the Tenant on May 22, 2022 and states that the Tenant or someone visiting or living with the Tenant has wilfully or negligently damaged the rental unit or the residential complex and that the Tenant's behaviour or the behaviour of someone visiting or living with the Tenant has substantially interfered with the Landlords reasonable enjoyment of the residential complex and/or lawful rights, privileges or interests and has a termination date of June 6, 2022.
14. Section 68(1) of the *Residential Tenancies Act, 2006* (the 'Act') states:

68(1) A landlord may give a tenant notice of termination of the tenancy if,

(a) a notice of termination was given to the tenant under section 62, 64 or 67;
and

(b) more than seven days but less than six months after the notice mentioned in clause (a) was given to the tenant, an activity takes place, conduct occurs or a situation arises that constitutes grounds for a notice of termination under section 60, 61, 62, 64 or 67, other than an activity, conduct or situation that is described in subsection 61(1) and that involves an illegal act, trade, business or occupation described in clause 61(2)(a).



15. Taking into consideration the above section of the *Act*, the second N5 notice repeated a number of allegations from the first N5 notice from April 10, 2022, such that I only considered the incidents alleged to have taken place on May 5, 2022. These allegations essentially dealt with complaints the Landlord had received from neighbours that the Tenant was speeding and driving recklessly on the residential street.
16. As these allegations from the second N5 notice pertain to incidents that did not occur in the rental unit or at the residential complex, the Board has no jurisdiction to consider them. Therefore, the allegations as contained in the second N5 notice is denied.
17. Pursuant to section 69(2) of the *Act*, an application may not be made later than 30 days after the termination date specified in the notice. As the L2 application was filed with the Board on May 25, 2022 and the termination date from the first N5 notice was May 17, 2022, I have jurisdiction to consider the substance of the allegations on the first voidable N5 notice of termination.
18. With respect to the first N5 notice of termination served upon the Tenant on April 27, 2022, based on the submissions and evidence at the hearing, and in the absence of any evidence from the Tenant, I am satisfied on a balance of probabilities that the Tenant wilfully or negligently caused undue damage to the rental unit and the Tenant did not pay the Landlords the \$5,000.00 claimed. I am also satisfied that the Tenant has substantially interfered with the Landlord's reasonable enjoyment of the rental unit and/or lawful rights, interests and privileges by smoking in the rental unit which was not permitted.
19. The Landlord seeks termination of the tenancy as well as reimbursement of the filing fee for the application.
20. Section 83 of the *Act* requires that I consider all the circumstances, including the Tenant's and the Landlords' situation to determine if it would be appropriate to grant section 83 relief from eviction. The Landlord states that the Tenant has not permitted the Landlord to enter the rental unit to conduct any repairs and that the Tenant has ceased paying rent. The Landlords are not aware of any other factors to consider with respect to relief from eviction. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the *Act*.

Section 89(1) Damage claim:

21. Included in the Landlords' application is for compensation in the amount of \$5,000.00 for damage to the LG refrigerator, damage to the laundry room door, the replacement of the lawn due to vehicles parked on it and for deep cleaning which would have to be undertaken to rid the rental unit of the smell of smoke from the rental unit. In order for an application for compensation for damages made pursuant to section 89(1) of the *Act* to success, a landlord must establish the following:
 - (a) there was property damage to the rental unit or residential complex;
 - (b) the damage is "undue" meaning that it is not normal wear and tear and it is not insignificant; and



(c) the damage was a result of wilful or negligent conduct by the Tenants, occupant or guest.

22. In this context, the word “property” refers to the physical objects such as walls, ceilings, floors, appliances and fixtures in a residential complex.
23. If all of these factors are met, then the Board can award the Landlords the reasonable cost of repair, or the replacement if it is not reasonable for the damage to be repaired.
24. The Landlord, Harihar Guragain (‘HG’) testified that the Tenant damaged the following items and provided photographs at the hearing which depict damage to the:
 - LG refrigerator door;
 - Laundry room door;
 - Lawn from parking on the lawn; and
 - Deep clean of the house required to rid it of smell of smoke.
25. With respect to the above noted damage, based on the uncontested evidence before me, I find that the undue property damage to the refrigerator, the laundry room door and damage from smoke was as a result of the Tenant’s negligent conduct.
26. With respect to the refrigerator, HG testified that he was seeking the full replacement cost, including HST and installation in the amount of \$3,559.44. HG stated that he was provided with a verbal quote from Home Depot after he contacted them and provided the model number of the refrigerator. HG acknowledged that he made no inquiries to determine if the refrigerator could be repaired.
27. I do not find the amount sought by the Tenants is reasonable as the unit is 4 years old and no inquiries were made as to whether the damage could be repaired. However, I acknowledge that replacement parts can be expensive, especially as the photographs depict a refrigerator that is not a basic refrigerator. Based on the evidence before me and on my knowledge of similar cases before the Board, I find that the amount of \$1,000.00 is reasonable.
28. With respect to the damaged laundry room door, HG testified that he checked the website for Home Depot, learned that it would cost \$360.47 to replace the damaged door and that he estimates it would cost \$200.00 for its installation. I am satisfied that the amount of \$360.47 to replace the damaged door is reasonable however, I am not satisfied that the amount of \$200.00 to install a door is. Based on the evidence before me and on my knowledge of similar cases before the Board, I find that the amount of \$100.00 is reasonable for the installation of a door.
29. HG testified that he received a quote from a cleaning company in the amount of \$548.81 to deep clean and remove the smell of smoke from the 3 bedroom rental unit. Based on the evidence before me and on my knowledge of similar cases before the Board, I find this amount to be reasonable.
30. HG submitted that the lawn has become damaged as a result of the Tenant parking motor vehicles on the lawn. No documentary evidence was submitted to substantiate this claim at the hearing and no estimates were provided to support the amounts being sought to



repair the lawn. As a result, I am not satisfied that this damage has occurred and no award will be granted.

31. Further, HG submitted that the Tenant had scratched the asphalt driveway and tendered a photograph depicting the scratch. No estimates were provided to detail the cost to repair and there was insufficient evidence as to the condition of the driveway was prior to the Tenant moving into the rental unit. As such, no award will be granted.
32. This order contains all of the reasons within it and no further reasons will be issued.

It is ordered that:

1. The request to review order LTB-L-028922-22 issued on November 1, 2022 is granted. Order LTB-L-028922-22 issued November 1, 2022 is cancelled and replaced with the following order.
2. The interim order issued November 28, 2022 is cancelled.
3. The tenancy between the Landlords and the Tenant is terminated. The Tenant must move out of the rental unit on or before January 31, 2023.
4. If the unit is not vacated on or before January 31, 2023, then starting February 1, 2023, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
5. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or after February 1, 2023.
6. The Tenant shall also pay the Landlords compensation of \$88.77 per day for the use of the unit starting December 21, 2022 until the date the Tenant moves out of the unit.
7. The Tenant shall pay to the Landlords \$2,009.28, which represents the reasonable costs of repairing the damage and/or replacing the damaged property.
8. The Tenant shall also pay to the Landlords \$186.00 for the cost of filing the application.
9. The total amount the Tenant owes the Landlords is \$2,195.28.
10. If the Tenant does not pay the Landlords 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 9, 2023
Date Issued

Heather Chapple
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 August 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.