



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

Citation: DOTY v MACVICAR, 2023 ONLTB 14062

Date: 2023-01-05

File Number: LTB-L-072079-22-RV  
(SWL-45455-20-RV)

In the matter of: 9 MCINTYRE STREET  
ST THOMAS ONTARIO N5R2M2

Between: Dawn Doty Landlord

And

Bill MacVicar Tenant

### Review Order

Your file has been moved to the Landlord and Tenant Board's new case management system, the Tribunals Ontario Portal. Your new file number is LTB-L-072079-22.

Dawn Doty (the 'Landlord') applied for an order to terminate the tenancy and evict Bill MacVicar (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 undue damage to the premises. The Landlord has also applied for an order requiring the Tenant to compensate the Landlord for the damage. The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was resolved by order LTB-L-072079-22 issued on September 6, 2022.

On October 5, 2022, the Landlord requested a review of the order.

On October 13, 2022, interim order LTB-L-072079-22-RV-IN was issued, staying the order issued on September 6, 2022.

This application was heard by videoconference on November 9, 2022 and December 7, 2022. The Landlord, the Landlord's legal representative, S. Pereira, the Tenant, and the Tenant's Legal representative, O. Humphreys, attended the hearing. The Tenant's witness, A. Pay, also attended the hearing.

### Determinations:

1. The Landlord filed a request to review alleging that the hearing member made the following serious errors:
  - The hearing member seriously erred in finding that the act of not reporting a leak does not constitute damage.



- The hearing member seriously erred in finding that nicotine stains on the walls is not damage but a cleaning issue.
  - The hearing member found that the Tenant painted, stripped and sanded natural woodwork but found that there was no proof or insufficient proof of damage to the woodwork.
2. At the review hearing, it was uncontested that the parties presented evidence regarding the leak, nicotine stains and painting / removal of paint on the woodwork to the hearing member.
  3. For the reasons that follow, I do not find that the Board made a serious error. As such, the Landlord's request to review is denied.

#### Leak

4. The Landlord submits that the hearing member erred in finding that not reporting a leak does not constitute damage. The Landlord submits that this finding implies that a tenant has no responsibility to report a water leak or accountable for resulting damages to the rental unit.
5. In paragraph 11 of LTB-L-072079-22 issued on September 6, 2022 (the 'Order'), the hearing member states:

With respect to the allegation of the Tenant not reporting ceiling water damage to the Landlord, this also is not related to damage. The act of not reporting the issue is not damage. Further, the Tenant testified that the Landlord was well aware of the damage caused by the roof leak. This part of the application is dismissed.

6. I do not find that the hearing member made a serious error regarding the leak in the roof. While the act of not reporting a leak may result in damage that is negligently caused, the hearing member also dismissed the Landlord's claim for the leak in the roof because they preferred the Tenant's evidence that the Landlord was aware of the damage. In other words, even if the hearing member concluded that failing to report a leak constitutes damage, in my view, the outcome would not be different as they would have found that the Tenant did not negligently cause damage as he reported the leak. As such, I am not satisfied that there is a serious error made in this regard.

#### Nicotine

7. The Landlord also submits that the hearing member seriously erred in finding that nicotine stains on the walls is not damage but a cleaning issue. The Landlord submits that this is contrary to several LTB decisions that have decided that nicotine smell and stains constitute damage.
8. In paragraph 13 of the Order, the hearing member states:

I do not consider a strong smell of cigarette smoke to be damage and the Landlord offered no testimony as to how this amounted to damage. As for nicotine on the walls, this is a lack of cleaning issue, not damage. Further the Landlord did not testify how this cleaning issue amounted to damage. Accordingly, this part of the application is dismissed.



9. The Landlord submits nicotine stains is damage because other members have found as such. However, these decisions were not binding on the hearing member. Further, I listened to the hearing recording and the Landlord did not refer to these decisions for the hearing member to consider. Moreover, the hearing member made a finding that the Landlord failed to satisfy them that these nicotine stains constituted damage within the meaning of section 62 of the *Residential Tenancies Act, 2006* (the 'Act'). As noted in paragraph 13, reproduced above, the hearing member concluded that the Landlord failed to establish that the stains required remediation above and beyond cleaning such that they constituted damage to the rental unit. As such, I am not satisfied that the hearing member made a serious error in this regard.

#### Painting of the woodwork

10. The Landlord submits that there is no rational connection between the adjudicator's finding of fact regarding the woodwork and the evidence presented at the hearing. The hearing member finds that the Tenant painted, stripped and sanded the natural woodwork of the rental unit. However, the adjudicator finds that there was no proof or insufficient proof of damage to the woodwork. The Landlord also submits that the adjudicator failed to consider evidence that this is the natural woodwork of the residential complex which was built in 1884 and designated as a "heritage site".
11. I find that the hearing member's finding of fact was not unreasonable. The hearing member refers to a definition of damage and provides detailed reasons as to why they did not find that the painting and stripping of the woodwork constituted undue damage in paragraphs 19-21 of the order. It is clear that the hearing member considered the evidence presented at the hearing. For example, they note there was paint in the crevices and some wood has to be sanded, as evident in the photographs submitted into evidence. The hearing member also considered that the house where the Tenant painted was acknowledged as "heritage" in paragraph 3 of their order. The hearing member concluded that in stripping the paint from the wood, it is not uncommon that wood has some paint residue and some sanding, which does not mean that it has been damaged. The hearing member further pointed to unchallenged evidence from the Tenant that an earlier contractor brought in by the Landlord had concluded that very little needed to be done to the wood.
12. In my view, the hearing member's findings on this point were supported by the evidence.
13. The hearing member was in the best place to weigh all of the evidence properly before them at the hearing. Findings of fact will generally not be interfered with on review except where there appears to be no rational connection between such findings and the evidence presented by the parties. After reviewing the order, the review request, and the parties' evidence and submissions at the review hearing, I am not satisfied that any of the hearing member's findings regarding the woodwork presents as patently unreasonable in light of the evidence. As such, I do not find that the Board made a serious error in this regard.
14. This order contains all of the reasons within it. No further reasons shall be issued.

**It is ordered that:**



1. The request to review order LTB-L-072079-22 issued on September 6, 2022 is denied. The order is confirmed and remains unchanged.
2. The interim order issued on October 13, 2022 is cancelled.

**January 5, 2023**  
**Date Issued**

Camille Tancioco  
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.