



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

Citation: Temp Stay Inc. v Michaud, 2022 ONLTB 14311

Date: 2022-12-15

File Number: LTB-L-037632-22

In the matter of: 202, 12 LANSDOWNE AVE
TORONTO ON M6K2V8

Between: Temp Stay Inc Landlord

And

Jason Michaud Tenant

2022 ONLTB 14311 (CanLII)

Temp Stay Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Jason Michaud (the 'Tenant') because:

- the Tenant, another occupant or the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused undue damage to the premises,
- * the Tenant or another occupant of the rental unit has committed an illegal act or has carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential complex;
- the Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex.
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully caused undue damage to the premises.

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

Temp Stay Inc. (the 'Landlord') also applied for an order requiring Jason Michaud (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. 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 heard by videoconference on December 12, 2022.

Only the Landlord's instructing client, and superintendent Joseph Sinesi and the Landlord's legal representative attended the hearing.

As of 2:40 pm 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 Landlord's evidence.

Determinations:

1. The Landlord presented evidence that the Tenant damaged the bathroom sink and altered the sink and plumbing causing water to leak from the Tenant's unit into an immediate unit below on June 9, 2022. Based on the testimony of the Superintendent, Joseph Sinesi, the water flooding and damage occurred in the rental unit of the Tenant and the unit below.
2. As a result, the Tenant was served with N5, N6 and N7 Notices for termination of the tenancy and claim damages. The Landlord filed a L2 application.
3. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the Tenancy is terminated effective January 3rd, 2023.
4. The Tenant was in possession of the rental unit on the date the application was filed and at the time of the hearing.
5. The Tenant was required to pay the Landlord \$4,841.42 in daily compensation for use and occupation of the rental unit for the period from July 18, 2022, to December 12, 2022.
6. Based on the Monthly rent, the daily compensation is \$32.71. This amount is calculated as follows: \$995.00 x 12, divided by 365 days.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.

Unauthorized change of lock by Tenant

9. The uncontested evidence of the Landlord is that on June 9th, 2022, when the Superintendent attended the unit in an emergency because of a flood, the Tenant had changed the lock to the unit door, forcing the Landlord to break the lock in order to enter the unit. The Tenant had not made a request to change the lock nor did the Tenant notify the Landlord that he had changed the lock.
10. Immediately after the flooding, the Landlord attended the Tenant's unit on June 14, 2022, to find that the lock had once again been changed without notice to the Landlord.
11. Based on the uncontested evidence of the Landlord's representative the Joseph Sinesi, I am satisfied that the Tenant changed the lock on the rental unit without the consent of the Landlord and failed to provide a key to the Landlord in breach of subsection 35(1) of the Act. There is no termination of the tenancy pursuant to s. 35(1) of the Act, nor has the Landlord filed a s.35 application.

Impairment of Safety and Damages to the Rental Unit

12. The Landlord's superintendent testified that on June 9, 2022, excessive water was leaking from the Tenant's unit into another unit directly below. The Tenant was not in the unit at the time. The Landlord's superintendent, Joseph Sinesi, attempted to open the door but it appeared that the Tenant had changed the lock and unable to unlock the door.
13. The Landlord gained access by breaking the lock. When J.S. entered the unit, he saw that the Tenant had removed the sink basin. The sink had been replaced by a large black plastic and a rubber tube was taped with white adhesive tape and connected to the existing wall drainpipe. The water was leaking from the homemade sink and alterations.
14. The Landlord entered into evidence a photo of the damaged, altered sink. The photo was taken on June 9, 2022. The photo submitted shows a black plastic used as a sink and taped to the tube and to the existing plumbing.
15. The Landlord also submitted into evidence a video taken from the unit below showing water flowing from the ceiling in the bathroom. In the video, heavy flow of water is seen, as well as extensive damage to the ceiling, walls.
16. The Landlord's legal represented submitted that the damaged caused by the water leaking into the unit could have seriously impaired the safety of others. The intense water leak flowing immediately in the unit bellow caused substantial damage to the ceiling and the walls and posed a threat to the other tenant.
17. The Landlord's legal represented submitted that the potential for mold and mildew growth could affect the health and wellness of the Tenant and the Tenant living in the unit below.
18. I have found that there has been a substantial impairment of safety to others in the residential complex by the Tenant.
19. I am satisfied that the on a balance of probabilities, the Tenant has removed the existing sink, replaced it with black plastic, removed the drainpipe replacing it with a tube and taping the parts together with tape. This resulted in damages to the unit and the unit below. The Tenant has caused wilful damage to the rental sufficient grounds have been established to terminate the tenancy.
20. The Landlord as provided estimates of the cost to repair the damage. J.S. testified that the sink, vanity, plumbing in the Tenant's unit needed replacement and repairing. The unit below suffered extensive damage, to the ceiling, walls and floors. The photographic evidence the Landlord submitted confirms this.
21. The estimate is based on the replacement of new vanity and sink, deconstruction of the damaged walls and ceiling, install and repair new plumbing, drywall and taping and labour. Since the Tenant had changed the locks, the Landlord was not able to have a contractor attend the unit to provide a quotation. The Landlord's estimate is based on other jobs performed and his professional option of the work.
22. [Section 89](#) of the [Act](#) states the following:

A landlord may apply to the Board for an order requiring a tenant to pay reasonable costs that the landlord has incurred or will incur for the repair of or, where repairing is not reasonable, the replacement of damage property, if the tenant, another occupant of the rental unit or a person whom the tenant permits in

the residential complex wilfully or negligently causes undue damage to the rental unit or the residential complex and the tenant is in possession of the rental unit.

23. After weighing the evidence presented by J.S. and the Landlord's legal representative, I find based on a balance of probabilities that the Tenant damaged the rental unit at the residential complex by removing the sink and replacing it with plastic and altering the plumbing causing water to flood the rental unit below. I also find the Landlord's estimate are at a reasonable cost to repair the damaged property. The Landlord is entitled to the amount of \$5000.00 for the damage caused by the Tenant.
24. Given that I find there are sufficient grounds to terminate the tenancy on the basis of substantial impairment of safety and wilful damage, it is not necessary for me to address the illegal acts allegation.

Section 83 Considerations

25. The Tenant did not attend the hearing to provide evidence regarding their circumstances.
26. I asked the Landlord's Legal Representative for information regarding the Tenant's circumstances in accordance with section 83 of the Act. J.S. submitted that he believes the Tenant has one other female occupant living with him and does not have children. He is not aware of any other circumstances which would cause a delay or denial of eviction.
27. 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)(b) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before January 3rd, 2023.
2. If the unit is not vacated on or before January 3rd, 2023, then starting January 4th, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after January 4th, 2023.
4. The Tenant shall pay to the Landlord \$4,841.42, which represents compensation for the use of the unit from July 18, 2022, to December 12, 2022, less the rent deposit and interest the Landlord owes on the rent deposit.
5. The Tenant shall also pay the Landlord compensation of \$32.71 per day for the use of the unit starting December 13, 2022, until the date the Tenant moves out of the unit.
6. The Tenant shall pay to the Landlord \$5,000.00, which represents the reasonable costs of repairing the damage and replacing the damaged property.
7. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
8. The total amount the Tenant owes the Landlord is \$10,027.42.

9. If the Tenant does not pay the Landlord the full amount owing on or before January 3rd, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 5th, 2023, at 5.00% annually on the balance outstanding.

December 15, 2022
Date Issued

Nicole Huneault
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 June 18, 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.