



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

Citation: Pedulla v Berube, 2022 ONLTB 9055

Date: 2022-11-25

File Number: LTB-L-002580-22

In the matter of: 53 Enniskillen Avenue
Thunder Bay ON P7B 4L9

Between: Maria Teresa Pedulla Landlord

And

Anna-Marie Berube Tenant

Maria Teresa Pedulla (the 'Landlord') applied for an order to terminate the tenancy and evict Anna-Marie Berube (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (L1 Application).

The Landlord also applied for an order requiring the Tenants to pay compensation for the damages caused by them or a person they permitted in the residential complex (L2 Application).

This application was heard by videoconference on September 7, 2022.

Only the Landlord and articling student Jeremy Kirk, acting as agent for the Landlord's Legal Representative Karson Blackwood attended the hearing.

As of approximately 9:45 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 Landlord's evidence.

Determinations:

L1 Application

1. The Tenant vacated the rental unit on February 5, 2022 and therefore the application was amended to an L9 application for arrears only.
2. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
3. The Tenant was in possession of the rental unit on the date the application was filed.
4. The Tenant vacated the rental unit on February 5, 2022. Rent arrears are calculated up to the date the Tenant vacated the unit
5. The lawful rent is \$2,300.00. It was due on the 1st day of each month.

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6. The Tenant has not made any payments since the application was filed.
7. The rent arrears owing to February 5, 2022 are \$11,878.10.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. There is no last month's rent deposit.

L2 Application – Damage

10. In her L2 application, the Landlord claims compensation in the amount of \$43,357.06 for undue damage caused by the Tenant.
11. Specifically, the application claims:
 - broken front door and frame
 - closet door, rear screen door and side window broken
 - floors, drywall, couch and loveseat seriously damaged
 - other fixtures damaged and in need of cleaning from neglect.
12. As explained below, I am satisfied on a balance of probabilities that the Tenant caused undue damage to the rental unit and that the Landlord should be compensated \$6,633.21 to repair this damage.
13. Based on photographs submitted of the property from June 2020 (before the Tenant moved in), August 2021, and also from after the Tenant vacated the property, I am satisfied that there was significant damage to the rental unit including:
 - a broken front door and frame,
 - a broken closet door,
 - broken kitchen cabinets,
 - stained and heavily damaged hardwood floors and carpet,
 - a broken coin operated washing machine,
 - damage to walls,
 - a drain opening in the basement with garbage inside, and
 - evidence of considerable rodent activity (including dead rodents).
10. The Landlord submitted the following documents:
 - Invoice dated September 30, 2021 from ARS Maintenance Services for removal of waste (\$1,442.95)
 - Estimate from ALDS Contracting dated November 29, 2021 totalling \$33,743.50 + HST.
 - Ad for replacement sofa and loveseat (\$2,778.00)
 - Invoice dated April 22 from Northern Window and Door for replacement of 2 windows (\$4,378.41)
 - Invoice dated December 6, 2022 for new kitchen cabinets (\$7,232.00)
 - Invoice for painting (\$3,400.00)
 - Invoice for cleaning (\$310.00)

- Invoice dated August 30, 2022 from ALDS Contracting for work including painting, drywall repair, kitchen removal, electrical work, new door (\$9,492.00, prices not itemized)
- Invoice from Leon's Furniture for new stove (\$981.91), new dishwasher (\$1,309.48)

14. I am not satisfied on a balance of probabilities that the Tenant caused the following wilful or negligent damage and therefore the Landlord is not entitled to compensation for:

- Costs for waste removal, painting, and cleaning: on the evidence these are not exclusively attributable to undue damage to the residential unit.
- Front door: The photos show that the door was nailed shut and the frame was damaged. The Landlord testified that this was a result of a police response to a domestic violence call at the unit. I cannot attribute this to wilful or negligent action on the part of the Tenant.
- Kitchen cabinets: the Landlord testified that the cabinets were in place when she purchased the property in 2000. While there was damage to the cabinets, I am not convinced on the evidence that all of the cabinets required replacing due to the Tenant's negligent or wilful actions.
- Stove and dishwasher: no direct evidence was led that the Tenant's actions caused irreparable damage to the dishwasher or the stove, although the Landlord testified that the rodents damaged the stove.
- Couch and loveseat: there is insufficient evidence to determine that there was undue damage by the Tenant.

Compensation for damage

15. I am satisfied on a balance of probabilities that the Tenant, an occupant or a visitor wilfully or negligently caused the following damage and therefore must compensate the Landlord.

Closet door in front hall

16. Photos show considerable damage to the door. The August 30 invoice for repair of damage was not itemized but the earlier quotation for replacement of a closet door was \$750.00 including labour, and I find this cost to be reasonable.

Rear screen door

17. The Landlord testified that the rear screen door was broken. I find it more likely than not that this damage would not be due to ordinary wear and tear over a 1.5 year tenancy. The Landlord submitted an estimate for \$450.00 to replace it.

Side window

18. The application claims that the window was broken, and the Landlord has produced a receipt for the replacement of two windows in the amount of \$4,378.41. The replacement value of one window is compensable in the amount of \$2,189.21.

Floors

19. The difference in the photos of the floors from before and after the tenancy do not show average wear and tear even with children and pets over a 1.5 year tenancy. Stains and heavy wear in the hardwood do not appear to be something that cleaning or refinishing could remedy. I find it more likely than not that at least some of the flooring needed to be replaced as a result of damage caused by the Tenant. From the photos provided, it would be fair to estimate that 1/2 of the flooring would need to be completely replaced.
20. The Landlord has not submitted evidence as to whether other options than completely replacing the floors were considered. The existing floors were hardwood and some carpet. The Landlord has submitted receipts to replace the flooring with vinyl plank, which is an economical flooring. The November 2021 estimate provided is for \$12,750.00 for the main floor and basement to remove the existing floors and install vinyl plank.
21. The August 30, 2022 invoice is the only evidence provided of a paid expense for flooring. It includes "flooring and trimwork," though there is no itemization of the costs. The entire invoice is for \$9,492.00. I find that it would be reasonable that the flooring portion of the invoice would be approximately 2/3 of the total, which is \$6,328.00. As I have found that the Tenant is responsible for the cost of replacing 1/2 of the flooring, the Tenant must compensate the Landlord in the amount of \$3,164.00 for damage to flooring.

Drywall

22. From the photos in evidence at pp. 84-85, it appears that the damage would be approximately 2 ft sq. This is significant damage in which there are sizeable holes in the drywall which cannot be attributed to ordinary wear and tear. The repair estimate provided is \$40/ sq ft and therefore \$80.00 will be awarded for damage to the drywall.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of February 5, 2022, the date the Tenant moved out of the rental unit.
2. The Tenant shall pay to the Landlord \$12,064.10. This amount includes rent arrears owing up to the date the Tenant moved out of the rental unit and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
3. The Tenant shall also pay to the Landlord \$6,633.21, which represents the reasonable costs of repairing the damage.
4. The total amount the Tenant owes the Landlord is \$18,697.31.
5. If the Tenant does not pay the Landlord the full amount owing on or before December 6, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 7, 2022 at 4.00% annually on the balance outstanding.
6. If the Landlord does not pay the Tenant the full amount owing on or before December 6, 2022, the Landlord will start to owe interest. This will be simple interest calculated from December 7, 2022 at 4.00% annually on the balance outstanding.

November 25, 2022

Date Issued

Margo den Haan

Member, Landlord and Tenant Board

15 Grosvenor St, 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.

**Schedule 1
SUMMARY OF CALCULATIONS**

A. Amount the Tenant must pay as the tenancy is terminated

Rent Owing To Move Out Date	\$11,878.10
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$0.00
Less the amount of the interest on the last month's rent deposit	- \$0.00
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$12,064.10

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