



FEB 22, 2024

**Order under Section 69 / 89
Residential Tenancies Act, 2006**

Citation: Pak v Mccafferty, 2024 ONLTB 13263

Date: 2024-02-22

File Number: LTB-L-001397-23

In the matter of: 136 SECOND AVE E
NORTH BAY ON P1B1L2

Between: Kwang Pak Landlord

And

Tara Mccafferty Tenants
Andrew Chestnut
Christopher Frizzell

Kwang Pak (the 'Landlord') applied for an order to terminate the tenancy and evict Tara Mccafferty, Andrew Chestnut and Christopher Frizzell (the 'Tenants') because the Tenants have wilfully or negligently caused damage to the premises.

The Landlord also applied for an order requiring the Tenants 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 Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex.

This application was heard by videoconference on January 11, 2024.

The Landlord, their representative Susanne Draper, and the Tenant Tara Mccafferty attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities some of his claims for compensation for damage. Therefore, the Tenants shall pay the Landlord \$2,511.00.
2. The Tenants were in possession of the rental unit on the date the application was filed.

No L1 Application Filed

3. The Landlord uploaded to the Tribunal's Ontario Portal an N4 notice of termination but did not file an L1 application to evict a tenant for non-payment of rent. As such, I cannot order eviction for non-payment of rent when no such application has been made to the Board.

N5 Notice Invalid

4. On December 10, 2022, the Landlord gave the Tenants an N5 notice of termination ('N5 Notice') with a termination date of December 18, 2022. The N5 notice alleges that the Tenants have willfully or negligently damaged the rental unit.
5. Pursuant to subsection 62(2)(a) of the *Residential Tenancies Act, 2006* ('the Act'), a first N5 notice alleging damage to the rental unit, must provide a termination date not earlier than the 20th day after the notice is given. In this case the termination date was only 18 days after the service of the N5 notice and as such the N5 notice is invalid. Eviction cannot be ordered based on an invalid notice of termination and therefore the eviction portion of the Landlord's application is dismissed.

Compensation for Damages

6. The Landlord provided an itemized list of all the alleged damage in the rental unit and a quote for a contractor to repair damage. Some of the items on the itemized list are not included in the contractor's quote and the Landlord has not asked for compensation for those items. As such I will only consider the damages which the Landlord is seeking financial reimbursement for.

Downstairs Bathroom Floor

7. Before and after photographs of the tile in the downstairs bathroom floor show that the tile in most of the bathroom has been removed. There are a few tiles remaining, but the majority of the floor is bare with the subfloor exposed.
8. The Tenant Tara Mccafferty ('T.M') testified that she removed the tile to address a plumbing issue. T.M testified that there was a leak and to avoid a flood she had to peel back the tile so that water could escape. T.M testified that she notified the Landlord of the plumbing issue but only waited approximately 30 minutes before dealing with the issue herself.
9. On a balance of probabilities, I find the Tenants willfully caused undue damage to the rental unit by removing the tile in the downstairs bathroom. The Tenants led insufficient evidence to establish that the plumbing issue was so urgent that they could not wait for the Landlord to arrive to address the problem and led insufficient evidence to establish that the only solution to the problem involved ripping up the floor. The Tenants also did not replace the flooring after they removed it.
10. The Landlord received a quote from Urech Contracting for materials to fix the floor (\$1,200.00) and (\$420.00) for the labour required. I find those to be the reasonable costs to replace the property damaged willfully by the Tenants.

Second Level Floor Warping

11. The Landlord testified that the floor on the second level of the rental unit has become warped from animal urine and feces. The Landlord introduced into evidence notes from an inspection of the rental unit which revealed the smell of urine and feces, and that cat feces was observed. The Landlord seeks \$6,200.00 to repair the floor.

12. The Landlord did not introduce into evidence any photographs that show damage to the second level floor. The contractor's report states that he needs to "replace the second level floors to modern laminate" which "includes releveling the floor and removal of damaged flooring".
13. T.M testified that there is no damage to the second level floor and that the Tenants' animals do not urinate on the floor.
14. I am not satisfied on a balance of probabilities that the Tenants have wilfully or negligently caused damage to the second level floor. The Landlord introduced into evidence no photographs which show the damage floor. The written description from the contractor is vague and leaves me unclear on what exactly is damaged, how much of the floor is damaged, and what caused any damage that might exist. Additionally, I not satisfied based on the Landlord's testimony alone about the existence and cause of any damage because the Tenant T.M provided directly contrary testimony.

Pet Odor Removal

15. The Landlord seeks \$2,400.00 in cleaning supplies and labour to remove pet odor. As stated previously I am not satisfied on a balance of probabilities that the Tenants' pets have caused damage to the rental unit by urinating or defecating on the rental unit floor. Additionally, I am also not satisfied that cleaning costs fall under the category of damage. The Landlord filed their application pursuant to section 89 of the Act for compensation for damage, not for reasonable out of pocket expenses for substantial interference, and therefore I cannot award costs for non damage related expenses.

Door and Trim Damage

16. The Landlord seeks \$705.00 to repair damage caused to seven doors and their surrounding trim. Photographs show significant scratches and marks around multiple doors in the rental unit.
17. The Tenant T.M agreed that there are claw marks on some of the rental unit doors.
18. On a balance of probabilities, I am satisfied that the Tenants negligently damaged seven rental unit doors by failing to take steps to ensure that their animals did not damage the doors. The scratch marks on the doors are excessive and not consistent with regular wear and tear.
19. The Landlord introduced into evidence a quote from a contractor for \$180.00 in materials and \$525.00 in labour to repair the damage. I find those to be the reasonable costs to replace the property damaged negligently by the Tenants.

Filing Fee

20. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

It is ordered that:

1. The eviction portion of the Landlord's application is dismissed.
2. The Tenants shall pay to the Landlord \$2,325.00, which represents the reasonable costs of repairing the damage and replacing the damaged property.
3. The Tenants shall also pay to the Landlord \$186.00 for the cost of filing the application.
4. The total amount the Tenants shall pay the Landlord is \$2,511.00
5. If the Tenants do not pay the Landlord the full amount owing on or before March 4, 2024, the Tenants will start to owe interest. This will be simple interest calculated from March 5, 2024 at 7.00% annually on the balance outstanding.

February 22, 2024
Date Issued



Amanda Kovats
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.