



Order under Section 69 Residential Tenancies Act, 2006

Citation: Caledon Country Club v Caledon Country Club, 2024 ONLTB 25333

Date: 2024-04-11

File Number: LTB-L-021358-23

LTB-L-020149-23

In the matter of: Red House, 2121 OLDE BASE LINE RD
INGLEWOOD ON L7C0K7

Between: Caledon Country Club

And

Alexandra Gajli

I hereby certify this is a
true copy of an Order dated

Apr 11, 2024

Landlord and Tenant Board

Landlord

Tenant

Caledon Country Club (the 'Landlord') applied for an order to terminate the tenancy and evict Alexandra Gajli (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (LTB-L-021358-23).

The Landlord also applied for an order to terminate the tenancy and evict the Tenant because the Landlord requires possession of the rental unit in order to convert the unit to a non-residential use (LTB-L-020149-23).

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

These applications were heard together by videoconference on March 27, 2024.

The Landlord's Agent, D. Boucher, and the Tenant attended the hearing.

Determinations:

LTB-L-021358-23

Tenant's issues pursuant to section 82 of the *Residential Tenancies Act, 2006* (the 'Act') –
Not considered

1. The parties were before me with respect to the Landlord's rent arrears application, LTB-L-021358-23, on September 25, 2023. At that time, although the Tenant stated that she emailed the Landlord's Agent the issues she intends to raise pursuant to section 82 of the Act seven days prior, she was unable to find the email in her sent folder. The Landlord's Agent stated that he had not received an email with a list of issues from the Tenant.
2. This application was adjourned from September 25, 2023 due to insufficient time left in the hearing block. Interim Order LTB-L-021358-23-IN issued on October 5, 2023 directed the Tenant to pay the undisputed ongoing rent commencing October 1, 2023 and directed the

parties to provide each other with any evidence that they intend to rely upon at the next hearing by October 31, 2023.

3. Section 82 of the Act states:

(1) At a hearing of an application by a landlord under section 69 for an order terminating a tenancy and evicting a tenant based on a notice of termination under section 59, the Board shall permit the tenant to raise any issue that could be the subject of an application made by the tenant under this Act if the tenant,

(a) complies with the requirements set out in subsection (2); or

(b) provides an explanation satisfactory to the Board explaining why the tenant could not comply with the requirements set out in subsection (2).

(2) The requirements referred to in subsection (1) are the following:

1. The tenant shall give advance notice to the landlord of the tenant's intent to raise the issue at the hearing.

2. The notice shall be given within the time set out in the Rules.

3. The notice shall be given in writing and shall comply with the Rules.

My Emphasis

4. Rule 19.4 of the Board's Rules of Procedure states:

Unless the LTB has directed or ordered otherwise, a tenant who intends to raise issues under sections 82(1) or 87(2) of the RTA during a hearing for a landlord's application about rent arrears shall provide the other parties and the LTB with the following at least 7 days before the scheduled CMH or hearing:

1. a written description of each issue the tenant intends to raise; and

2. a copy of all documents, pictures and other evidence that the tenant intends to rely upon at the hearing.

My Emphasis

5. The Tenant confirmed at this hearing that she still has not provided written notice of her issues and supporting evidence to the Landlord as required by subsection 82(2) of the Act and Board Rule of Procedure 19.4. The Tenant has the Landlord's Agent's email address, has communicated in the past via email with him, and was directed to provide this evidence to him in the interim order. Given this, I was not satisfied that the Tenant provided a reasonable explanation as to why she could not have complied with these requirements. Therefore, the Tenant's issues pursuant to section 82 of the Act cannot be considered by the Board.

6. The Tenant was, however permitted to raise any issue as circumstances to be considered by the Board pursuant to s.83(3)(a) of the Act. That section states that the Board must deny an eviction application where the Landlord is in serious breach of their obligations under the Act. The Tenant is also entitled to raise these issues and seek a remedy by filing her own application at the Board.

Lawful Rent

7. As explained below, I find that the lawful monthly rent is \$3,000.00. There is no dispute that the rent is due on the 1st day of each month.
8. The Landlord's Agent stated that monthly rent was \$3,000.00 at the commencement of the tenancy. The Tenant did not dispute that the rent was originally \$3,000.00 however she stated that the parties agreed to reduce the rent to \$2,500.00 in exchange for the Tenant conducting small fixings/repairs. The Tenant relied on an agreement between the Property Manger at the time and herself dated February 27, 2018. A copy of which was entered into evidence.
9. This agreement at paragraph 2 states the following:

“But as per your associate “Andrew” being a handyman and who used to do building maintenance, we are willing to as of March 1st 2008, if you sign and agreed to accept the responsibility of maintenance and repairs. including labour and materials. to a reduction of \$500 per month going forward from this date on. also on condition you accept the house in “AS IS” condition. All modifications/renovations must still be approved by the property manager.”

10. The Landlord's Agent questioned the validity of this agreement given that there is no clause to terminate this arrangement. He stated that the Landlord has requested in writing that the Tenant cease doing any maintenance at the unit in August 2022. The Landlord's Agent stated that the Landlord has their own contractors, who are licensed and insured.
11. The Tenant argued that this a contract between the Landlord and herself and that Landlord cannot unilaterally cancel/change it. The Tenant does not want to cancel this agreement. Although, the Tenant also disputes that she is responsible for maintenance, she believes she was only required to do small fixings here and there.
12. Subsection 20(1) of the Act states:

A landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards.

13. Subsection 3(1) of the Act states:

This Act, except Part V.1, applies with respect to rental units in residential complexes, despite any other Act and despite any agreement or waiver to the contrary.

14. In accordance with subsection 20(1) of the Act, a landlord is responsible for maintenance and repairs of the rental unit. This is an obligation that parties cannot waive pursuant to subsection 3(1) of the Act. Consequently, the Act applies despite the parties' agreement.
15. In any event, the Tenant's interpretation of the agreement was that she is only responsible for small fixings and such. The Tenant did not provide any evidence that she has been completing maintenance and repairs to the rental unit. In fact, the Tenant alleges a lack of maintenance and repair by the Landlord.
16. An agreement must be based on a meeting of the minds of the parties involved. Based on the evidence before me, I find on a balance of probabilities that there was never a meeting of the minds between these parties. The Tenant clearly did not understand the terms of this agreement in that the rent reduction is only in exchange for maintenance and repairs to the unit. She believed that she had to do simple repairs and fixings when needed. She did not provide any evidence that she completed maintenance or repairs to the unit, or paid for any labour or materials, over the last six years.

N4 Notice

17. The Landlord credited the Tenant an amount of \$1,500.00 for the period of August 1, 2022 to August 31, 2022, hence why the rental period in the N4 Notice started on August 15, 2022.
18. Based on the evidence before me, I was satisfied that the correct amount of rent owing is claimed in the N4 Notice despite the rental periods not being listed correctly. Given this, I was also satisfied that the incorrect rental periods did not amount to a fatal error in the N4 Notice as the Tenant still had an opportunity to void this notice by paying the correct amount that was set out in the N4 Notice.
19. Therefore, I find that 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.
20. As of the hearing date, the Tenant was still in possession of the rental unit.
21. Based on the Monthly rent, the daily rent/compensation is \$98.63. This amount is calculated as follows: \$3,000.00 x 12, divided by 365 days.
22. The Tenant has paid \$15,000.00 to the Landlord since the application was filed.
23. The Landlord waived one month's rent owing as compensation required to be paid to the Tenant pursuant to section 52(2) of the Act, see determinations below. Therefore, the Tenant is entitled to a credit of \$3,000.00.
24. Therefore, I find that the rent arrears owing to March 31, 2024 are \$31,500.00.
25. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
26. The Landlord collected a rent deposit of \$3,000.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.

27. Interest on the rent deposit, in the amount of \$309.25 is owing to the Tenant for the period from December 1, 2017 to March 27, 2024.

LTB-L-020149-23

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On December 1, 2022, the Landlord gave the Tenant a Notice to End Tenancy Because the Landlord Wants to Demolish the Rental Unit, Repair It or Convert It to Another Use (N13 Notice) which provided a termination date of March 31, 2023. The Landlord claims vacant possession of the rental unit is required for conversion to non residential use.
4. The Landlord's Agent stated that the property falls under the jurisdiction of the Niagara Escarpment Commission (the "NEC"). He stated that on August 26, 2022, the Landlord received a Notice of Violation from the NEC advising that it was noted that a development was undertaken on the subject property and lists the following: change of use (conversion of a sales and administrative building to a residential dwelling) and change of use (operation of a short-term commercial rental.) The Notice of Violation further stated to bring the property into compliance, the following is required:
 - a) No later than September 2, 2022 cease advertisement of the property as a short term commercial rental (Airbnb, Kijiji).
 - b) No later than October 28, 2022 cease the short term commercial rental of the property.
 - c) No later than February 28, 2023 cease the habitation of the red brick structure.
5. The Landlord's Agent also stated that the Landlord, as a corporation, can be liable for a fine of up to \$50,000.00 upon conviction for failure to comply with this order. The Landlord's Agent further stated that is why they served the N13 Notice on the Tenant as they plan to return the building to it is approved zoning use which is a sales office or administrative building for the club. He stated that the Landlord investigated the option of applying for the change of use and discovered that it is not financially feasible, will be a very lengthy process (years), and there would be no guarantee that their application would be granted.
6. The Tenant stated that the Landlord contacted the NEC which led to the Notice of Violation. She stated that she spoke with the enforcement officer who advised that the penalty would only be \$60.00 to her and \$2,500.00 or less for first offence to the owner if she continues to advertise with Airbnb. So she stopped advertising and stopped Airbnb rentals. However, the Tenant stated that when she spoke with the new enforcement officer, she was advised that the owner could easily ask for a change of use but never did even though he knew and allowed the Airbnb rental.
7. The Tenant also stated that the new enforcement officer told her she should reside in the unit and run a "Bed and Breakfast" which was the opposite of the previous enforcement officer who said she cannot reside there. The Tenant further stated that she believed she received permission from the enforcement officer to run a "Bed and Breakfast" in email correspondence with the officer.

8. This email communication was not disclosed to the Landlord nor a copy provided to the LTB prior to the hearing because according to the Tenant it came after the deadline in the Interim order for disclosure. The Tenant sent a copy of the email to the Landlord's Agent during the hearing. The Landlord's Agent stated that the officer states in the email that she is "not in a position to authorize the activity."
9. The Tenant also submitted that the owner always knew that she planned to use the property as a short term rental (Airbnb) since the beginning of the tenancy. The Tenant believes she should not be punished because the Landlord's mistake with zoning and the NEC. The Tenant requests to continue the tenancy.
10. There was no dispute that the Tenant does not reside in the rental unit, she resides in another building on the property. Although, the Tenant stated that her partner is currently staying in the unit to watch their belongings. The Agreement to Lease between the Landlord and Tenant which commenced on December 1, 2017 stated that the premises would be used for "Airbnb" and "Bed and Breakfast."
11. The Landlord's Agent stated that the issue with the NEC arose as a result of complaints made in regard from renters on Airbnb.
12. Based on the evidence before me, I find on a balance of probabilities that the Landlord requires the rental unit to be vacant because the Landlord in good faith intends to convert it to a non-residential use. The Landlord is currently under an order from the NEC to bring the property into zoning compliance. The building is zoned as a "sales and administrative building," not residential.
13. The evidence before me was insufficient to find that the Tenant received permission from the NEC to reside in the unit and run it as a "Bed and Breakfast." The Notice of Violation has not been rescinded by the NEC and the compliance order states at c) "No later than February 28, 2023 cease the habitation of the red brick structure." Given the language of "cease the habitation," I find it unlikely that an enforcement officer would permit the continued habitation of this property in the face of the Notice of Violation issued.
14. The Tenant submits that the Landlord should request a change of use with the NEC. The Landlord's Agent provided evidence that the Landlord investigated this avenue and found it to not be financially feasible, extremely lengthy and no guarantee that their request would be granted. The Tenant did not provide any evidence in dispute of the Landlord's Agent's submission. The Tenant simply believes that it is an easy process for the Landlord and the request would be granted.

Compensation

15. The Tenant stated that she had not been paid compensation as required in the N13 Notice. The Landlord's Agent stated that he thought since the Landlord was under an order from the NEC that they did not have to pay compensation.
16. The residential complex contains fewer than five residential units. Therefore, the Landlord is required to compensate the Tenant in an amount equal to one month rent or offer the Tenant another rental unit acceptable to the Tenant.

17. Section 55.1 of the Act requires a landlord who is obligated to give compensation pursuant to subsection 52(2) of the Act to pay that compensation no later than the termination date in the N13 Notice.
18. In *6150 Yonge GP Inc. v. Boxma*, the Divisional Court has accepted that the LTB has the discretion to extend, pursuant to subsection 190(2) of the Act, the deadline for a landlord to pay compensation owing to a tenant. In that case the landlord had attempted to pay the compensation and it was refused by the tenant.
19. Given the Divisional Court ruling in the above case, I find that it is reasonable to exercise my discretion in this case and extend the time for the Landlord to pay compensation to the Tenant. The Landlord is unrepresented and misunderstood that compensation is still required to be paid even if under an order to convert the unit to non-residential use. A tenant is not entitled to compensation where a demolition order is made.
20. At the hearing, the Landlord waived one month's rent from the amount owing by the Tenant in L1 application as compensation required by subsection 52(2) of the Act. Consequently, I am satisfied that the Tenant has been paid one month's rent as compensation as required.

Relief From Eviction

Section 83(3) of the Act

28. Pursuant to section 83(3)(a) of the Act, I must refuse to grant eviction if satisfied that, the Landlord is in serious breach of its obligations under the Act.
29. The Tenant alleged that the Landlord is in serious breach of their maintenance obligations pursuant to subsection 20(1) of the Act as there was no water in the rental unit as a result of the Landlord's actions for the period of January 2023 to October 2023. At the last hearing, the Tenant also raised this as an issue.
30. Interim order LTB-L-021358-23 issued October 5, 2023, directed the Landlord to investigate and effect any necessary repair/replacement to ensure that the Tenant has access to water in the rental unit.
31. At the commencement of this hearing, the Landlord's Agent stated that on September 27, 2023, after the last hearing, their contractor completed diagnostic work and found an issue with the well. The Landlord's Agent stated that on September 29, 2023 a repair was effected to wires that appeared to have been chewed by vermin affecting the well head. The Landlord's Agent stated that after this repair water was restored to the unit. The Tenant stated that it did not get corrected until the end of October or something.
32. The Tenant also alleged that now that the water has been connected to the house, there is an issue as the water drips from the ceiling. She stated that she can only turn on the water to fill a bucket and then must shut it off so it does not drip. She stated, it is leaking under the shower but no one is taking a shower.
33. The Landlord's Agent stated that during the winter/spring of 2023 the Tenant allowed the home to go cold which caused the pipe to burst. He stated that he opened up the walls and effected some repairs. However, when he went back to finish, he found that, although

the Tenant was asked to not have someone else do repairs, she had her partner, "Andrew," repair the pipe. The Landlord's Agent stated that he had to go back to make further repairs, however after that time he has tried to contact the Tenant through email and text to which she will not respond. He also stated that he has had a lot of difficulty getting contractors to attend the rental unit because of the Tenant's demeanor.

34. The Tenant stated that she has a right to record work done on the property. She stated that she wanted to record the repair to the well to use for evidence at this hearing. She stated that she asked the Landlord's contractor if it was okay to record him and he turned left the property. The Landlord's Agent stated that the contractor did not want to be recorded and left because of the Tenant's conduct.
35. There is no dispute that the water has been restored to the unit. The issue now appears to be water leaking from a pipe under the shower when the water is turned on. There is also not dispute that the relationship between the parties has broken down. The Landlord's Agent stated that the Tenant is not responding to his requests. The Tenant did not dispute these assertions.
36. In *Onyskiw v. CJM Property Management Ltd.*, [2016 ONCA 477](#), the Court of Appeal held that the LTB should take a contextual approach and consider the entirety of the factual situation in determining whether there was a breach of the landlord's maintenance obligations, including whether the landlord responded to the maintenance issue reasonably in the circumstances. The court rejected the submission that a landlord is automatically in breach of its maintenance obligation as soon as an interruption in service occurs.
37. Based on the evidence before me, I am not satisfied that this issue amounts to a serious breach of the Landlord's maintenance obligations under the Act. In accordance with *Onyskiw*, the Landlord is not automatically in breach of its maintenance obligations because there is a leaking pipe. A contextual approach and consideration of all the facts must occur before a determination can be made.
38. There is no dispute that the Landlord has effected some repairs and attempted to return to the unit to complete additional repairs to the pipe. However, the Tenant is not responding to the Landlord's Agent's requests for entry and has interfered with a contractor that was on site to effect another repair. Given the Tenant's actions, I find it more likely than not that the Landlord has not been given a reasonable opportunity to remedy this issue. If the Landlord or its contractors cannot freely access the rental unit because of the Tenant's actions, I cannot be satisfied that the Landlord is in serious breach of its obligations.

Section 83(2) of the Act

39. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would not be unfair to postpone the eviction until April 30, 2024 pursuant to subsection 83(1)(b) of the Act.
40. The Landlord's Agent requested a standard eleven day eviction order. He submitted that the Tenant owes substantial rent arrears and that the Landlord is under an order from the

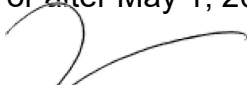
NEC to convert the unit to non-residential use. He further submitted that the Tenant does not reside in the unit as she has another place of residence.

41. The Tenant stated that this tenancy has been in place for six and half years and she had always paid on time even during COVID when she could not rent it out on Airbnb. She stated that she only stopped paying rent because she was wrongfully advised to do so due to the issue with the water. She understands now that she was wrong. She loves this property very much and relies on it for income. She rented two units from the Landlord, one to live in and one to use as Airbnb (income). Her partner, who is turning 70 has had two heart attacks and cannot work. They rely on his social security for food. The Tenant also stated that she is suffering from depression which has affected her decision making regarding this matter.
42. The rent arrears currently outstanding are \$31,500.00, this is a significant increase since the application was filed seeking rent arrears of \$13,540.00. The Tenant has not demonstrated that these arrears can be paid or offered to repay them. Also, this is not the Tenant's primary address, the Tenant has another unit where she and her partner reside. Further, the Landlord is under an Order from the NEC issued over a year and a half ago to convert the property back to its proper zoning which is non-residential. Consequently, I find that it would be unfair to delay the eviction any longer than April 30, 2024. This extension is to provide the Tenant some additional time to remove any personal property from the unit.

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 April 30, 2024.
2. The Tenant shall pay to the Landlord \$24,982.23. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
3. The Tenant shall also pay the Landlord compensation of \$98.63 per day for the use of the unit starting March 28, 2024 until the date the Tenant moves out of the unit.
4. If the Tenant does not pay the Landlord the full amount owing on or before April 30, 2024, the Tenant will start to owe interest. This will be simple interest calculated from May 1, 2024 at 7.00% annually on the balance outstanding.
5. If the unit is not vacated on or before April 30, 2024, then starting May 1, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. 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 May 1, 2024.

April 11, 2024
Date Issued



Lisa Del Vecchio
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 expires on November 1, 2024 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.

**Schedule 1
 SUMMARY OF CALCULATIONS**

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

Rent Owing To Hearing Date	\$49,145.48
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$18,040.00
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	- \$3,000.00
Less the amount of the interest on the last month's rent deposit	- \$309.25
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 (compensation)	- \$3,000.00
Total amount owing to the Landlord	\$24,982.23
Plus daily compensation owing for each day of occupation starting March 28, 2024	\$98.63 (per day)