



Order under Section 69
Residential Tenancies Act, 2006

File Number: EAL-85466-19
EAL-87565-19
EAT-86581-19

In the matter of: 2, 163 MONTREAL ROAD
CORNWALL ON K6H1B2

Between: Paul Laplante

and

Stephane Fournier

I hereby certify this is a
true copy of an Order dated
OCTOBER 19, 2021
DM
Landlord and Tenant Board

Landlord

Tenant

AMENDED HEARING ORDER

This amended order is issued to correct an error contained in the original order. Corrections have been bolded and underlined for ease of reference. Strike through has been added to emphasize necessarily deletions.

Paul Laplante (the 'Landlord') applied for an order to terminate the tenancy and evict Stephane Fournier (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (the 'L1 Application').

The Landlord also applied for an order to terminate the tenancy and evict the Tenant because the Landlord requires possession of the rental unit for the purpose of residential occupation. The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date (the 'L2 Application').

The Tenant applied for an order determining that the Landlord harassed, obstructed, coerced, threatened or interfered with the Tenant and substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of the Tenant's household (the 'T2 Application').

The Tenant also applied for an order determining that the Landlord failed to meet the Landlord's maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards (the 'T6 Application').

These applications were heard by telephone and video hearings on September 3, 2020, October 8, 2020, November 12, 2020, March 11, 2021 and June 17, 2021.

The Landlord, the Landlord's Legal Representative Daniel Moak, and the Tenant attended the hearing. The parties were assisted by French-English Interpreters Manuel Costa and Claude Bordeleau.

Vice Chair Marisa Victor attended the hearing on June 17, 2021.

Determinations:

Background:

1. This hearing was adjourned several times due to issues with the Tenant's conduct during the hearings.
2. Vice Chair Marisa Victor attended the June 2021 hearing. This was done to ensure that the hearing could be completed in a timely and efficient manner.
3. As a result of the Tenant's conduct during the June 2021 hearing, the Tenant was muted several times for interrupting and make submissions during inappropriate times.

L1

4. The Tenant has not paid the total rent the Tenant was required to pay for the period from October 1, 2019 to November 30, 2020.
5. Because of the arrears, the Landlord served a Notice of Termination effective December 1, 2019.

L1 - Illegal Rent Increase

6. At the hearing, the Tenant denied owing the outstanding rent. He argued that the rent the Landlord was claiming was due to an illegal rent increase.
7. The Tenant wished to make submissions regarding section 116 of the *Residential Tenancies Act, 2006* (the 'Act'), arguing that the Landlord illegally increased the rent. The Tenant argued that the Landlord was trying to unilaterally change the terms of the lease and that he had not received notice of the rent increase.
8. This was objected to by the Landlord's Legal Representative, as the Tenant, who had filed a T2 and T6 Application, did not file an Application for a Rebate of Money the Landlord Owes (a 'T1 Application').
9. Since the issue of the outstanding rent is before the Board, I allowed submissions on this matter in order to determine if, and exactly how much rent arrears the Tenant is owing.
10. The Landlord provided evidence that the Tenant had received the proper Notice of Rent Increase (the 'N1 Notice') on April 1, 2019.

11. The Tenant first disagreed that he received this notice, then stated that he did, and then submitted that the rent increase was "*forbidden by the Board*".
12. To summarise the provisions of the *Act* with respect to rent increases:
- A landlord cannot increase the rent charged to a tenant for a rental unit except in accordance with the *Act*.
 - Generally speaking, the *Act* contemplates three kinds of rent increases: increases by notice from the landlord; increases on consent (see sections 121 and 123); and increases ordered by the Board in response to a landlord application for a rent increase above the guideline (section 126);
 - For rental units not exempt from the relevant provisions of the *Act*, a notice of rent increase served on a tenant by a landlord must:
 - Be in the Board's prescribed form (Form N1) and set out the amount of the new rent.
 - Set out an increase that is no more than the guideline amount in effect for the year the increase is to begin.
 - Set out an effective date for the increase that is at least 12 months after the date of the last rent increase; and
 - Be served on the tenant at least 90 days before the effective date of the rent increase.
13. In this case, after reviewing the evidence provided in advance of the hearing and during testimony, based on a balance of probabilities, I am persuaded that the Landlord provided the Tenant with a valid N1 Notice. I base myself on the testimony and evidence provided by the Landlord during the hearing, which demonstrated that he did provide the Tenant with an N1 Notice that complied with the *Act*.
14. I preferred the evidence of the Landlord over that of the Tenant, as the Landlord was able to corroborate his testimony with documentary evidence and provide a clear, consistent recollection of the above-mentioned events.
15. Since the Landlord complied with all of the above, I am not persuaded by the Tenant that the Landlord's increase in rent is not compliant with the *Act*.
16. Therefore, I find that the rent arrears being claimed by the Landlord are outstanding and the Tenant is ordered to pay them.

L2

17. The Landlord submitted that he wished to reside in the Tenant's rental unit due to currently being effectively homeless. He submitted that he is currently living with his girlfriend but wished to live alone and closer to his work.
18. The Tenant argued that the Landlord doesn't like the Tenant and is trying to evict him despite having other living options available to him. The Tenant supported this with his own testimony.
19. After considering the evidence submitted in advance and during the hearing, based on a balance of probabilities, I find that Landlord in good faith requires possession of the rental unit for the purpose of residential occupation.
20. The Landlord provided persuasive evidence that he intends to reside in the rental unit for a period of at least one year. This was supported via his testimony and his affidavit. Furthermore, the Tenant was unable to demonstrate beyond his oral testimony that the Landlord was acting in bad faith.
21. The Landlord provided the Tenant and the Board with a copy of the required affidavit in accordance with section 72(1) of the *Act*.
22. The Landlord paid the Tenant compensation equal to one month's rent on October 21, 2019 in accordance with section 48.1 of the *Act*.
23. Based on the above, the Landlord has complied with the *Act's* requirements for his L2 Application.

T2

24. The Tenant filed a T2 the Board on October 15, 2019 on the basis that the Landlord substantially interfered with the Tenant's reasonable enjoyment of the rental unit and harassed, coerced, obstructed, threatened or interfered with the Tenant.
25. Section 23 of the *Act* states that a landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant.
26. The Tenant argued that the N4 Notice related to the above mentioned L1 Application, an N5 that the Tenant received, the N1 mentioned above and the conduct of the Landlord towards the Tenant's Ontario Disability Support Program ('ODSP') worker consisted of harassment.
27. The Tenant also argued that the Landlord failed to provide the Tenant with rent receipts and called him names.

28. The Landlord argued that he is entitled to protect his legal rights by service parties, including the Tenant, with notices and applications. He also denied harassing the Tenant and his ODSP worker. He reminded the Board that the Tenant has not demonstrated any of his claims beyond his oral testimony, which he submitted, was not compelling.
29. In terms of the N4, since it was already addressed above, I do not find serving the Tenant with said notice consists of harassment or substantial interference. The Landlord is entitled to pursue his legal options via the available channels, which includes serving the Tenant with a Notice. Furthermore, I've found the N4 and N1 Notices to be valid. In terms of the N5 Notice, the Tenant has not demonstrated based on a balance of probabilities how this would consist of harassment. The Tenant has not demonstrated a pattern of unfounded notices by the Landlord.
30. Since this application was filed by the Tenant, he carries the onus of demonstrating, based on a balance of probabilities, that the Landlord harassed and/or interfered with the Tenant's reasonable enjoyment of the rental unit.
31. In this case, the Tenant's only evidence was his oral testimony. I was less persuaded by this than the Landlord's evidence, as the Tenant's was inconsistent during his testimony.

T6 Application

32. The Tenant also filed a T6 Application related to maintenance issues. The Application stated that the Tenant requested maintenance and repairs on the following issues in the rental unit:
- Living room
 - Kitchen
 - Back door
 - Outdoor lights
 - Indoor hall
 - Bathroom
 - Bedroom
 - Roof
33. Section 20(1) of the *Act* sets out a landlord's maintenance obligations; it states:
34. *"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."*
35. In *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477, the Court of Appeal held that a landlord will not be held liable for breaching its maintenance obligations if it responds to a maintenance issue reasonably in the circumstances.

36. The Landlord raised a preliminary issue related to this application. He argued that the Tenant had never informed the Landlord of the above mentioned issues. Since the Landlord was not aware of the issues raised by the Tenant, there was no way that he could reasonably address them, as he only became aware of them when the Tenant filed the application.
37. He requested that the Tenant provide him and the Board with evidence of when the above-mentioned maintenance breaches were communicated to the Landlord.
38. Furthermore, the Landlord also submitted that after the first hearing, he took steps to address the above-mentioned issues, and ensured that the roof was "redone".
39. I put this issue to the Tenant, as he is the applicant in this file. The Tenant argued that the Landlord was made aware of the maintenance breaches when the Tenant filed his application. As such, the Landlord ought to have been aware of the maintenance requiring action.
40. Unfortunately, the Tenant's position is inconsistent with *Onyskiw v. CJM Property Management Ltd.* By failing to notify the Landlord of these issues prior to filing the T6 Application, the Tenant failed to provide the Landlord with a reasonable opportunity to resolve these issues before entering into litigation.
41. I don't find that the Landlord failed to meet the Landlord's maintenance obligations. Therefore, the T6 application shall be dismissed.

Section 83 Considerations

42. During the hearing, I invited the parties to make submissions regarding section 83 of the Act, which allows me to consider all the circumstances of the parties and delay or deny the eviction if it would be unfair to not do so.
43. The Tenant submitted that if I granted the Landlord's application to terminate the tenancy and evict the Tenant, he would be homeless. He submitted that he lives with Type 1 Diabetes and kidney damage. He also submitted that he has mobility issues.
44. 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) of the Act.
45. I base myself on the on-going prejudice the Landlord has faced due to the lengthy amount of time it has taken the parties and the Board to hear this matter. Furthermore, the Tenant's conduct during the hearings also delayed the process several times, causing more, on-going prejudice to the Landlord, who filed his application over two years ago.
46. Though I sympathize with the Tenant's situation, these applications were filed in 2019. As such, I find that this solution provides balance to both parties.

It is ordered that:

1. ~~The tenancy between the Landlord and the Tenant is terminated, as of October 20, 2021. The Tenant must move out of the rental unit on or before October 30, 2021. Unless the Tenant voids the order as set out below, the tenancy between the Landlord and the Tenant is terminated, as of October 19, 2021. The Tenant must move out of the rental unit on or before October 19, 2021.~~
2. The Tenant shall pay to the Landlord \$~~11,387.94~~* \$524.00, which represents the amount of rent owing and compensation up to ~~October 8, 2021~~ October 20, 2021.
3. The Tenant shall also pay to the Landlord \$16.73 per day for compensation for the use of the unit from ~~October 9, 2021~~ October 20, 2021 to the date the Tenant moves out of the unit.
4. The Tenant shall also pay to the Landlord \$190.00 for the cost of filing the L1 application.
5. The Tenant shall also pay to the Landlord \$190.00 for the cost of filing the L2 application.
6. If the Tenant does not pay the Landlord the full amount owing on or before ~~November 18, 2021~~ November 28, 2021, the Tenant will start to owe interest. This will be simple interest calculated from ~~November 19, 2021~~ November 29, 2021 at 2.00% annually on the balance outstanding.
7. If the unit is not vacated on or before ~~October 19, 2021~~ October 30, 2021, then starting ~~October 20, 2021~~ October 31, 2021, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
8. 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 ~~October 20, 2021~~ October 31, 2021.

October 19, 2021
Date Issued


Stephanie Kepman
Member, Landlord and Tenant Board

Eastern-RO
255 Albert Street, 4th Floor
Ottawa ON K1P6A9

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

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In accordance with section 81 of the Act, the part of this order relating to the eviction expires on May 1, 2022 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 if the tenancy is terminated:~~

Reasons for amount owing	Period	Amount
Arrears: (up to the termination date in the Notice of Termination)	October 1, 2019 to October 8, 2021.	\$5,990.00
Plus compensation: (from the day after the termination date in the Notice to the date of the order)	December 2, 2019 to October 8, 2021	\$34,688.00
Amount owing to the Landlord on the order date: (total of previous boxes)		\$35,000.00
Additional costs the Tenant must pay to the Landlord:		\$190.00
Plus daily compensation owing for each day of occupation starting October 9, 2021:		\$16.73 (per day)
Total the Tenant must pay the Landlord		\$35,190 + \$16.73 per day starting October 9, 2021

B. ~~Amount the Tenants must pay to void the eviction order and continue the tenancy:~~

Reasons for amount owing	Period	Amount
Arrears:	March 1, 2019 to October 31, 2021	\$64,400.00
Additional costs the Tenants must pay to the Landlord:		\$190.00
Total the Tenants must pay to continue the tenancy:	On or before October 19, 2021	\$64,590.00

A. Amount the Tenant must pay the Landlord.

Reasons for amount owing	Period	Amount
Arrears:	October 1, 2019 to October 1, 2021	\$198.00
Compensation	From October 1, 2021 until October 20, 2021	\$326.00

Amount owing to the Landlord on the order date:(total of previous boxes)	\$524.00
Additional costs the Tenant must pay to the Landlord for the L1 Application:	\$190.00
Additional costs the Tenant must pay to the Landlord for the L2 Application:	\$190.00
Plus daily compensation owing for each day of occupation starting October 20, 2021:	\$16.73 (per day)

Total the Tenant must pay the Landlord	\$904.00 + \$16.73 per day starting October 20, 2021
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