



Order under Section 69
Residential Tenancies Act, 2006

File Number: TEL-15260-21

In the matter of: BASEMENT, 1988 GUILD ROAD
PICKERING ON L1V1Y1

Between: Gopiben Patel

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

Landlord

April 20, 2022

and

Fatima Desrosiers

Landlord and Tenant Board

Tenant

Gopiben Patel (the 'Landlord') applied for an order to terminate the tenancy and evict Fatima Desrosiers (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard via video teleconference on March 30, 2022. The Landlord attended the hearing. The Tenant attended the hearing.

Determinations:

Date the Tenant vacated rental unit

1. At the hearing, the parties confirmed the Tenant vacated the rental unit and the parties agreed that the Tenant has not paid anything towards the monthly rent since February 1, 2021.

Landlord's evidence

2. The Landlord stated he did not know the actual date when the Tenant vacated the rental unit. The Landlord relied on a text message which he read into the record at the hearing. He stated that he received a text message from the Tenant on August 2, 2021 advising the Landlord that she was going to be moving her belongings out of the rental unit on August 3, 2021.

Tenant's evidence

3. The Tenant stated she moved out of the rental unit on July 3, 2021. She stated the text message the Landlord referenced was sent by the Tenant on June 29, 2021.

Analysis

4. I prefer the Landlord's testimony which relied on a text message sent by the Tenant on August 2, 2021 which advised that she would be moving out her belongings on August 3, 2021. The Board issued an interim order on July 16, 2021 following the parties appearing before the Board via videoconference on July 14, 2021. The Interim order notes there was not enough time to hear the L1 application as the Tenant raised maintenance issues in accordance with s. 82(1) of the *Residential Tenancies Act, 2006* (the "Act") and the matter was adjourned. The interim order notes the parties consented to terminate the tenancy effective August 1, 2021. Therefore, I find the interim order issued by the Board establishes that the Tenant had not vacated the rental unit by July 3, 2021 and accept the August 2, 2021 text message relied on by the Landlord that the Tenant vacated the unit on August 3, 2021.

L1 application

5. The Tenant has not paid the total rent the Tenant was required to pay for the period from February 1, 2021 to July 31, 2021. Because of the arrears, the Landlord served a Notice of Termination effective February 16, 2021.
6. The Tenant vacated the rental unit on August 3, 2021. The Tenant was in possession of the rental unit on the date the application was filed.
7. The monthly rent is \$1500.00
8. The Tenant has made no payments since the application was filed.
9. The Landlord collected a rent deposit of \$1,500.00 from the Tenant and this deposit is still being held by the Landlord.
10. Interest on the rent deposit is owing to the Tenant for the period from January 21, 2021 to February 16, 2021.
11. The Tenant is entitled to a rent abatement in the amount of \$1,800.00 (\$300.00 per month for the period of February 1, 2021 – July 31, 2021) for the Landlord not complying with a city order from the Fire Department
12. The Tenant is entitled to a rent abatement for the internet service in the amount of \$240.00 (\$60.00 per month for the period from April 1, 2021 – July 31, 2021).
13. The rent abatement is to be applied as an offset to the amount the Tenant owes for the rent arrears for the period from February 1, 2021 to July 31, 2021.

Section 82 issues raised by the Tenant

14. At the hearing, the Tenant raised maintenance issues which the Board permitted in accordance with s. 82(1) of the Act. The Tenant provided disclosure in writing to the Landlord and the Board regarding the maintenance issues she intends to raise in accordance with the Board's Rules. The Landlord confirmed receipt of the Tenant's disclosure and the Board proceeded with hearing these issues raised by the Tenant.

Issue #1 - Rental unit is an illegal unit because it not a registered unit and carbon monoxide leak

Tenant's evidence

15. The Tenant stated the furnace was not working properly since the date she moved into the rental unit on December 26, 2021. She also stated she noticed a smell of carbon monoxide gas ("gas") and contacted the Pickering Fire Department ("Fire Department") the week of January 7, 2021. She stated she was experiencing dizziness, noticed a rotten egg smell in the unit, and the carbon monoxide level was 0.667%. She stated the Fire Department attended her rental unit that week and advised her that her unit was an unregistered unit and that one of the gas lines was leaking. She stated the gas was shut off from January 7 – 10, 2021. She stated she advised the Landlord of the issue with the furnace and gas leak that same week. She stated the Landlord repaired the issue with the furnace that week but the carbon monoxide leak continued over a 5 month period and she has suffered memory loss as a result.

Landlord's evidence

16. The Landlord stated there was a gas leak coming from one of the lines at the water heater and it was repaired by Reliance on January 8, 2021. The Landlord stated there was nothing wrong with the furnace but the Landlord replaced the furnace on January 8, 2021.
17. The Landlord stated he received a copy of a fire order from the city on January 8, 2021. He stated the city ordered repairs to the rental unit which were to be completed by March 9, 2021. The Landlord stated the repairs ordered to the rental unit included the installation of a fire door, installation of a suspended dry plaster ceiling in the basement, and a sprinkler in the furnace room was to be installed.
18. The Landlord stated the repairs were not completed until November 15, 2021 because the Tenant would not allow the Landlord access to the rental unit to perform the repairs. The Landlord stated he sent a text message to the Tenant on January 11, 2021 advising the Landlord needs access to the rental unit but the Tenant would not allow the Landlord access to the unit which resulted in the police being called on a number of occasions. The Landlord stated he sent another text message to the Tenant on January 19, 2021 which advised the Tenant that the Landlord wanted access to the unit on January 24, 2021 but the Tenant denied the Landlord access to the rental unit on that date. The Tenant had surgery on January 11, 2021 and was recovering.

Analysis

19. The Tenant is entitled to a 20% rent abatement in the amount of \$1,800.00 (\$300.00 per month for the period from February 1, 2021 – July 31, 2021). I find this represents the period for which the Landlord did not comply with the Fire Department order from the city to perform the ordered repairs relating to fire safety in the rental unit. I accept the Landlord's testimony that the Landlord became aware of this issue when he received the order from the Fire Department on January 8, 2021 and that he was unable to gain

access to the rental unit during the month of January 2021 to complete the repairs. The Landlord has not provided further evidence which supports the Landlord made further attempts to access the Tenant's unit on other dates, or the steps the Landlord took to address accessing the rental unit when the Tenant would not allow the Landlord access.

20. The Tenant is not entitled to a rent abatement for the gas leak or the furnace issue. I accept the Landlord's testimony that the gas leak was repaired on January 8, 2021 and the furnace was replaced on January 8, 2021. The Tenant has not produced evidence to support that the carbon monoxide leak continued for 5 months. The Tenant has not produced any medical evidence which supports she sustained memory loss as a result of the gas leak in her unit. Therefore, I find the gas leak and the issues with the furnace were both repaired on January 8, 2021 which I accept is a reasonable amount of time after it was brought to the Landlord's attention.

Issue#2 – The air is too damp causing mould growth and health issues

Tenant's evidence

21. The Tenant stated there was water leaking at the foundation of the residential complex which leaked into the entrance door of her rental unit. She stated this resulted in moisture accumulating in the walls and her bathroom had a musty smell. She stated this has caused her to experience health issues which included developing ringworm, fungus developing in her blood, mucous in her eyes which has caused her vision to become blurred. She stated she is still experiencing a mucous discharge from her eyes. The Tenant stated she advised the Landlord of this issue on January 12, 2021 and the Landlord advised the Tenant on that date to use the dehumidifier supplied by the Landlord and the Landlord did nothing to further address this issue. The Tenant stated there was mould growing on the hose connected to the dehumidifier. She stated that she disconnected the hose from the back of the dehumidifier. She stated she moved the hose so it could drain into a bucket inside the furnace room. She stated she emptied the water from this bucket three times per day.

Landlord's evidence

22. The Landlord stated that he had a dehumidifier professionally installed in the washroom of the Tenant's unit but the Tenant disconnected the hose from the humidifier which drained the water into the shower in the Tenant's bathroom. The Landlord stated the Tenant had issues with her health prior to moving into the rental unit.

Analysis

23. The Tenant is not entitled to an abatement of rent for this issue. This is because the Tenant has not produced evidence which supports there was water leaking into the rental unit from the foundation walls which was caused mould growth inside her rental unit. The Tenant produced several undated photographs, showing her eyes and hands, and what appears to be some mould growth on what appears to be a wood surface. I afford no weight to the photographs as they were undated and the Tenant has not provided any medical diagnosis linking the Tenant's allegations that she contracted ringworm,

developed mucous in her eyes and fungus in her blood as a result of mould growth at the rental unit.

Issue#3 – Landlord entered rental unit without notice

Tenant's evidence

24. The Tenant stated the Landlord entered her rental unit at 10:30 pm without notice. She could not recall the date but stated it was after her surgery on January 11, 2021.

Analysis

25. As the Tenant was unable to provide the date or further particulars regarding the alleged illegal entry by the Landlord, I find the Landlord was not able to properly respond to this issue. As a result, I have not considered a rent abatement for this issue.

Issue#4 - Drawer of oven/stove has sharp metal edges causing cuts when opening drawer

Tenant's evidence

26. The Tenant submits the edges of the bottom drawer of the oven/stove had sharp edges which nicked her daughter's finger when opening the drawer. She stated she advised the Landlord of this on January 9, 2021 and nothing was done with the oven/stove prior to her moving out.

Landlord's evidence

27. The Landlord stated the Tenant never previously advised him of this issue. He stated the Fire Department required him to replace the stove with one that is height compliant for proper ventilation. He stated the stove was replaced on January 9 or 10, 2021.

Analysis

28. The Tenant is not entitled to a rent abatement for this issue. The Tenant testified that her daughter nicked her finger on one occasion when opening the bottom drawer of the oven/stove. The Tenant provided no further details regarding further incidences in which either the Tenant or her daughter experienced injuries resulting from opening/closing the oven door. Therefore, based on this one isolated incident, I do not find this constitutes a serious maintenance breach pursuant to s. 20(1) of the Act.

Issue#5 – Internet never worked and Tenant obtained own internet service

Tenant's evidence

29. The Tenant stated that internet service was to be included with her lease. She stated when she moved into the rental unit, the internet was not working very well and that she was using the internet service which belonged to the upstairs Tenant. The Tenant stated she advised the Landlord of this issue sometime between February 2021 – March 2021.

The Tenant stated she obtained her own internet service in late March 2021 which she paid \$60.00 per month but did not produce receipts for the hearing.

Landlord's evidence

30. The Landlord stated free internet service was not something included within the signed lease agreement. He stated he advised the Tenant she would have free internet service when she moved into the rental unit and that she was provided with free internet service for approximately four months. The Landlord stated he cancelled her internet service because she was not paying the monthly rent and 30% of the cost of the utilities as required.

Analysis

31. The Tenant is entitled to a rent abatement of \$240.00 for the months of April 1, 2021 - July 31, 2021 (\$60.00 per month for four months). A written lease agreement was produced for the hearing which does not note that internet service is included as part of the lease. However, the Landlord has conceded that he made an oral agreement with the Tenant when she moved in that she would be provided with free internet service and the Landlord stated he cancelled this service after 4 months due to the Tenant's non-payment of rent and 30% of the utilities. Therefore, I find this constitutes an oral agreement between the Landlord and Tenant that the Tenant would have free internet service during her tenancy which would be paid for by the Landlord. The Tenant stated she arranged and paid for her own internet service commencing at the end of March 2021. However, she did not provide when that date was or how much she paid for the internet usage in March 2021. While the Tenant did not produce any receipts for the internet, I accept the Tenant's oral evidence that she paid \$60.00 per month for the internet service which I find to be reasonable.

It is ordered that:

1. The tenancy is terminated as of August 3, 2021, the date the Tenant gave vacant possession of the rental unit to the Landlord.
2. The Tenant shall pay to the Landlord \$5,534.69*, which represents the amount of rent owing and compensation up to August 3, 2021, less the rent deposit, interest the Landlord owes on the rent deposit, and the amount owing to the Tenant for the rent abatement.
3. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
4. If the Tenant does not pay the Landlord the full amount owing* on or before May 2, 2022, the Tenant will start to owe interest. This will be simple interest calculated from May 3, 2022 at 2.00% annually on the balance outstanding.

April 20, 2022
Date Issued



Kimberly Parish
Member, Landlord and Tenant Board

Toronto East-RO
2275 Midland Avenue, Unit 2
Toronto ON M1P3E7

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

* Refer to section A on the attached Summary of Calculations.

**Schedule 1
SUMMARY OF CALCULATIONS**

File Number: TEL-15260-21

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

Reasons for amount owing	Period	Amount
Arrears: (up to the termination date in the Notice of Termination)	February 1, 2021 to February 16, 2021	\$789.04
Plus compensation: (from the day after the termination date in the Notice to the date of the order)	February 17, 2021 to August 3, 2021	\$8,285.76
Less the rent deposit:		-\$1,500.00
Less the interest owing on the rent deposit:	January 21, 2021 to February 16, 2021	-\$0.11
Less amount owing to Tenant for rent abatement		-\$2040.00
Amount owing to the Landlord on the order date: (total of previous boxes)		\$5,534.69
Additional costs the Tenant must pay to the Landlord:		\$186.00
Total the Tenant must pay the Landlord as the tenancy is terminated:		\$5,720.69