



Order under Sections 69 & 135 Residential Tenancies Act, 2006

Citation: Guenette v Waters, 2024 ONLTB 14793

Date: 2024-02-29

File Numbers: LTB-L-043241-23

LTB-T-040857-23

In the matter of: R1, 2025 OGILVIE RD
Ottawa ON K1J7P1

Between: Martin Guenette

And

Shawn Waters



Landlord

Tenant

Martin Guenette (the 'Landlord') applied for an order to terminate the tenancy and evict Shawn Waters (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (LTB-L-043241-23, L1 Application).

The Tenant applied for an order determining that the Landlord collected or retained money illegally (LTB-T-040857-23, T1 Application).

This applications were heard by videoconference on January 4, 2024.

The Landlord, the Landlord's legal representative, Arashdeep Grewal ('AG'), the Tenant, and the Tenant's legal representative, Shannon Sproule ('SS'), attended the hearing.

Determinations:

L1 Application

1. 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. The N4 notice claimed the monthly rent was \$700.00, then claimed \$600.00 in rent arrears. The N4 notice claimed the Tenant paid only \$600.00 per month each month from December 2022 to May 2023.
2. As of the hearing date, the Tenant was still in possession of the rental unit.

Lawful Monthly Rent

3. There was a dispute as to what the lawful monthly rent was during the relevant time.
4. The Landlord said that the Tenant initially rented a basement bedroom in the residential complex, and the rent was \$600.00 per month. The Landlord said that original tenancy began in June or July 2020. He said this room was about 100 square feet.

5. The Landlord said that a larger room on the main floor became available, and the Tenant wanted to move into it. The Landlord said this other room was about 180 square feet. The Landlord said the parties agreed the rent for the new room would be \$700.00 per month, and that the Tenant moved into it in May 2021 and paid the new rent of \$700.00 until November 2022.
6. The Landlord presented as evidence drawings of the two rooms, indicating their relative sizes and the documents say the monthly rent for the basement room was \$600.00 and for the new room is \$700.00 (DOC-2498195, pp 4-5).
7. The Landlord said the residential complex is a 4000 square foot property with two units containing rooms that are rented out. He said there is a back unit with 4 rooms and the front unit, where both of the Tenants rooms are, has 5 or 6 units, but it is being reduced to 4.
8. In terms of the arrangement for payment of the rent, the Landlord said the agreement was that ODSP would pay \$600.00 per month, and the Tenant would pay the additional \$100.00 for the new unit directly to the Landlord. He said the Tenant sometimes paid this \$100.00 by e-transfer, but it was usually paid in cash.
9. The Landlord said the Tenant stopped paying the additional \$100.00 per month because someone from the Salvation Army told the Tenant he did not have to pay the additional \$100.00. The Landlord said this person thought the additional \$100.00 was an illegal rent increase, but did not contemplate or understand that this was in fact a new tenancy, and it was not a rent increase.
10. There was no written tenancy agreement presented relative to either room. The Landlord said he knows that the standard form of lease is required by section 12.1 of the *Residential Tenancies Act, 2006* (the 'Act'). He said that he did not prepare one because he did not think it would be helpful.
11. The Tenant has continued paying \$600.00 per month from December 2022 to the hearing date. This amount is being paid directly by ODSP to the Landlord.
12. On cross-examination, the Landlord was asked about an email he sent the Tenant on January 4, 2023 wherein the Landlord states to the Tenant that he has not paid his full rent, and "[a]lso please note that we will [be] increasing your rent to 1450.00\$" (DOC-2488176, p. 5). There is no indication in the email as to why the Landlord planned to increase the rent to this amount. The Landlord said it was because the Landlord was going to add a kitchenette and bathroom, but it never happened. There was no evidence that there was ever any agreement under section 123 of the Act to increase the rent for this purpose, nor is a bathroom or kitchenette a prescribed service, facility, accommodation, privilege or thing for the purpose of section 123 of the Act: s. 16, *O. Reg. 516/06*. This increase would be far in excess of any increase that could be permitted on an agreement under section 121 of the Act.
13. When questioned about differing amounts he has claimed over time, the Landlord said that the rental ledger presented with the L1/L9 update sheet is accurate. That is that the rent was \$700.00 per month since the Tenant moved into his current room until the rent increased in July 2023.

14. The Tenant said that he initially moved into the basement unit in 2018, but he moved into the upstairs unit in or about April 2021. The Tenant said that the monthly rent for the basement unit was \$550.00, and the rent agreed to for the upstairs unit was \$600.00. The Tenant confirmed there are no written lease agreements for either unit.
15. The T1 application indicates the rent for the basement unit was \$600.00, but the Tenant said that was an error, and it was \$550.00.
16. When asked about the Landlord's January 4, 2023 email saying the rent would increase to \$1,450.00, the Tenant said he did not know why the email was sent, but said that he told the Landlord this would be an illegal rent increase.
17. An email that the Tenant received on August 31, 2023 from an organization called "Landlord Credit Bureau" indicating the Tenant owed the Landlord "... a debt of \$7xx.xx at the end of last month" was also presented as evidence by the Tenant.
18. The Tenant presented a copy of a different N4 notice that he said the Landlord gave him, dated November 15, 2023 (after the N4 on which this application was based was given). In the November N4 notice, the Landlord claimed \$3,087.50. The amounts claimed and paid were all lumped together, and the Landlord claimed he charged \$24,787.50 and the Tenant paid \$21,700.00 for the period October 1, 2020 to November 30, 2023. The Tenant said this was confusing and he could not decipher what the Landlord was actually claiming for. This would amount to an average of \$652.30 per month over the course of 38 months and two tenancies. It is not possible from the information in the November N4 what amounts were charged and paid for any particular month.
19. The Tenant also presented as evidence a copy of a letter from ODSP dated March 9, 2023 confirming that ODSP has been paying \$600.00 directly to the Landlord for the Tenant's rent from April 2021 to the date of the letter (DOC-2488176, p. 6). The Tenant also presented an email from ODSP dated December 19, 2023 confirming again that ODSP paid the Landlord \$600.00 directly for the rent from April 2021 to the date of the email (DOC-2488176, p. 15).
20. The Tenant said that he believes that the Landlord owes him \$600.00, because he paid the Landlord an extra \$100.00 per month for 6 months. According to the Tenant, he paid the additional \$100 per month from June 2022 to November 2022 because the Landlord demanded it, and the Tenant was concerned about being evicted.
21. According to the Landlord's N4 notice, application, ledger, and update sheet, the Tenant actually paid the additional \$100.00 for the months of May 2021 to November 2022. I accept that the Tenant paid a total of \$700.00 (\$600.00 from ODSP plus \$100.00 directly to the Landlord) per month each month from May 2021 to November 2022. This is a total of 17 months.

Law & Analysis

22. AG submitted that the Tenant began paying \$700.00 per month from May 2021 to November 2022, and only stopped paying the additional \$100 when he was told by a person from Salvation Army that he did not have to.

23. The key point in AG's submission was that the Tenant paid the additional \$100.00, in addition to the \$600.00 per month being paid by ODSP, for more than 12 consecutive months.
24. SS submitted that there was no clear, convincing, and cogent evidence that the agreed rent for the new unit was \$700.00, but the Tenant presented clear, convincing, and cogent evidence about the lawful rent and how it was paid. She submitted it would be illogical for the Tenant to arrange for ODSP to pay only part of the rent.
25. SS also noted the Landlord's various inconsistent claims for rent arrears, and his email claiming he would increase the monthly rent to \$1,450.00.
26. When the Tenant moved into the upstairs rental unit, the tenancy for the basement unit was terminated and a new tenancy began. The parties were free to agree to a new rent for the new rental unit.
27. The Tenant's T1 application was filed May 23, 2023. In it he goes back one year, claiming he overpaid the rent by \$100.00 per month from May to November 2022.
28. Whether the rent that was originally agreed to was \$600.00 or \$700.00 is not material to this decision, because rent charged one or more year earlier is deemed to be lawful unless an application is made within one year of the date it was first charged, and the lawfulness of the rent charged is an issue in the application: ss.136(1), *Residential Tenancies Act, 2006*.
29. Section 136 of the Act does not save a rent increase if the increase would be void pursuant to subsection 116(4) of the Act: *Price v. Turnbull's Grove Inc.*, 2007 ONCA 408 (CanLII), para 23. However, to the extent that the move to a total of \$700.00 in monthly rent was a rent increase taken without 90 days' written notice in a form approved by the LTB, the increase would be deemed not void by the Act.
30. The Tenant paid the \$700.00 for at least 12 consecutive months, and no application was filed within that 12-month period where the validity of the increase was in issue. Because of this, the increase is deemed not void: s.135.1, *Residential Tenancies Act, 2006*.
31. Both the L1 application and the T1 application were filed in May 2023, more than one year after the Tenant had paid \$700.00 for at least 12 consecutive months from May 2021 to April 2022.
32. The Landlord claimed in the L1/L1 update sheet that the rent increased to \$717.50 in July 2023. This would be an increase of 2.5%, which is within the guideline for 2023. There was no evidence given by the Tenant that this increase would not have been lawful, except to the extent that it would not have been lawful if the rent prior to the increase were \$600.00.
33. The lawful monthly rent was therefore \$700.00 for the months for which the N4 notice claims arrears. There was no dispute that the Tenant paid \$600.00 for each of these months (from December 2022 to May 2023).

Rent Arrears Owing

34. The lawful rent is \$717.50. It is due on the 1st day of each month.

35. Based on the Monthly rent, the daily rent/compensation is \$23.59. This amount is calculated as follows: \$717.50 x 12, divided by 365 days.
36. The Tenant has paid \$4,800.00 to the Landlord since the application was filed.
37. The rent arrears owing to January 31, 2024 are \$1,522.50.
38. The Landlord incurred costs of \$186.00 to file this application. The LTB customarily orders that a Landlord who is successful on an application is entitled to reimbursement of this cost. In this case, however, I find that it is appropriate to order no costs. The Tenant was paying what he believed the lawful rent to be, and I find the Landlord's conduct in writing to the Tenant that the rent would increase to \$1,450.00 per month, and the service of the November 2023 N4 notice to be inappropriate.
39. There is no last month's rent deposit.

Relief from Eviction

40. The Tenant said that if it is determined he owes rent arrears, he would find a way to pay the arrears. He said he receives about \$1,150.00 from ODSP and has no other income. He said that he has looked for other rental units, but rents elsewhere are higher than what he currently pays or what he can afford. The most affordable rental unit he has found was \$950.00 per month, not including utilities. The utilities for the rental unit are included in the rent.
41. The Tenant said that eviction would have a big impact on him. In addition to the lack of other affordable housing, he said he would potentially lose his support groups and medical professionals in the area, and that he has lived in the area for his whole life.
42. The Tenant said that the Landlord just wants more money and is searching for a way to evict him. The Tenant said he feels he has been harassed, and this has been very stressful and has impacted his mental health.
43. The Tenant has said that the Landlord cut off the internet, which is included in the rent, and the heat goes on and off. The Tenant said he has filed other applications about these issues.
44. AG submitted that an order ought to be issued terminating the tenancy and evicting the Tenant.
45. SS submitted that eviction ought to be refused under subsection 83(3)(a) of the Act because the Landlord is in serious breach of his obligations under the Act. The wording of subsection 83(3)(a) of the Act is present in nature, and requires the Landlord to be currently in serious breach of the Act as of the hearing date – the serious breach must be ongoing.
46. To prove a fact on a balance of probabilities, one must present sufficient clear, convincing, and cogent evidence of the fact: *FH v. McDougall*, 2008 SCC 53 (CanLII), para 46. There was not sufficient clear, convincing, and cogent evidence of facts ongoing as of the hearing date that would constitute a serious breach of the Act.
47. SS also submitted that if the Tenant is found to owe rent arrears, a standard eviction order terminating the tenancy 11 days after the date of the order is not appropriate. She

submitted that the Tenant has been paying what he sincerely believed was owed, that he is on ODSP and has a limited income.

48. I accept that the Tenant's payment of \$600.00 per month instead of \$700.00 was not nefarious in any way, and this is what he believed he owed. In all of the circumstances, I find that an extended payment plan is appropriate.

49. 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 not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

T1 Application

50. In the T1 application, the Tenant claimed that he paid illegal rent that the Landlord charged for a period of 6 months. In particular, he said the Landlord charged and the Tenant paid \$700.00 per month for the months of June to November 2022, which was \$100.00 per month higher than the lawful rent.

51. For the reasons stated above, I find that the lawful monthly rent at the relevant time was \$700.00.

52. The Tenant's application is therefore dismissed.

It is ordered that:

L1 Application

1. The Tenant shall pay the Landlord \$1,522.50 which represents the rent arrears owing as of the hearing date to January 31, 2024.
2. The Landlord's application to evict the Tenant is denied on the following conditions:
3. If the Tenant has not paid the full lawful rent of \$717.50 for the month of February 2024, then the full amount owing for February 2024 shall be paid by May 31, 2024.
4. The Tenant shall pay the full lawful rent of \$717.50 for the month of March 2024 by May 31, 2024.
5. The Tenant shall make the following payments in respect of the amounts owing under paragraph 1 of this order:

| Date Payment Due | Amount of Payment |
|------------------|----------------------|
| March 15, 2024 | \$45.00 (arrears) |
| April 15, 2024 | \$45.00 (arrears) |
| May 15, 2024 | \$45.00 (arrears) |
| June 15, 2024 | \$45.00 |

| | |
|--------------------|----------------------|
| | (arrears) |
| July 15, 2024 | \$45.00 (arrears) |
| August 15, 2024 | \$45.00 (arrears) |
| September 15, 2024 | \$45.00 (arrears) |
| October 15, 2024 | \$45.00 (arrears) |
| November 15, 2024 | \$45.00 (arrears) |
| December 15, 2024 | \$45.00 (arrears) |
| January 15, 2025 | \$45.00 (arrears) |
| February 15, 2025 | \$45.00 (arrears) |
| March 15, 2025 | \$45.00 (arrears) |
| April 15, 2025 | \$45.00 (arrears) |
| May 15, 2025 | \$45.00 (arrears) |
| June 15, 2025 | \$45.00 (arrears) |
| July 15, 2025 | \$45.00 (arrears) |
| August 15, 2025 | \$45.00 (arrears) |
| September 15, 2025 | \$45.00 (arrears) |
| October 15, 2025 | \$45.00 (arrears) |
| November 15, 2025 | \$45.00 (arrears) |
| December 15, 2025 | \$45.00 (arrears) |
| January 15, 2026 | \$45.00 (arrears) |
| February 15, 2026 | \$45.00 (arrears) |

| | |
|--------------------|----------------------|
| March 15, 2026 | \$45.00 (arrears) |
| April 15, 2026 | \$45.00 (arrears) |
| May 15, 2026 | \$45.00 (arrears) |
| June 15, 2026 | \$45.00 (arrears) |
| July 15, 2026 | \$45.00 (arrears) |
| August 15, 2026 | \$45.00 (arrears) |
| September 15, 2026 | \$45.00 (arrears) |
| October 15, 2026 | \$45.00 (arrears) |
| November 15, 2026 | \$45.00 (arrears) |
| December 15, 2026 | \$37.50 (arrears) |

6. The Tenant shall also pay to the Landlord new rent on time and in full as it comes due and owing for the period April 1, 2024 to December 31, 2026, or until the arrears are paid in full, whichever date is earliest.
7. If the Tenant fails to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenant to the Landlord pursuant to paragraph 1 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenant, apply to the LTB within 30 days of the Tenant's breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant and requiring that the Tenant pay any new arrears, NSF fees and related charges that became owing after January 31, 2024.

T1 Application

8. The Tenant's application is dismissed.

February 29, 2024
Date Issued



Mark Melchers
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.