



OCT 16, 2023

Kelly Delaney
Landlord and Tenant Board

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

Citation: Majmudar v Kaur, 2023 ONLTB 67302

Date: 2023-10-16

File Number: LTB-L-040831-22

In the matter of: Basement, 1 SNAPDRAGON SQ
BRAMPTON ON L6P3K4

Between: Dipakkumar Majmudar Landlord

And

Tamanna Kaur, Rupinder Sidhu, Ravinder Kaur and Gurvir Kaur Tenants

Dipakkumar Majmudar (the 'Landlord') applied for an order to terminate the tenancy and evict Tamanna Kaur, Rupinder Sidhu, Ravinder Kaur and Gurvir Kaur (the 'Tenants') because the Tenant did not pay the rent that the Tenant owes.

Procedural History:

This application was initially heard by videoconference on February 16, 2023 at which time the Landlord presented his evidence and the Tenant Rupinder Sindhu provided her evidence including raising several section 82 issues.

This application was then reconvened by videoconference on September 25, 2023 at 09:00 am at which point the Landlord provided his response testimony and evidence on the section 82 issues raised by the Tenant.

The Landlord Representative Arnold Miguel, the Landlord, the Tenant Representative Manjit Garcha and attended the hearing.

Determinations:

1. The Landlord served the Tenant with a 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.
2. The Tenant Representative submitted that the N4 notice was not valid because it didn't specify "Basement" but rather unit #2. However, as the Tenant vacated the rental unit effective January 29, 2023, whether the N4 Notice is valid is no longer a relevant issue. As the tenancy has already ended only the portion of the Landlord's application claiming arrears of rent needs to be considered, not eviction.
9. The Tenant was in possession of the rental unit on the date the application was filed.

10. The Tenant vacated the rental unit on January 29, 2023. Rent arrears are calculated up to the date the Tenant vacated the unit.
11. At the September 25, 2023 hearing, The Landlord Representative requested I direct the Tenant Representative to provide the forwarding address for the Tenant, submitting that refusing to do so would render it impossible for the Landlord to collect on the order for arrears and therefore make the hearing process and the Board meaningless.
12. In response the Tenant Representative submitted that it was outside the Board's jurisdiction to do so and that he was under no obligation to provide it.
13. Agreeing with the Tenant Representative I denied the Landlord Representatives request. Obtaining information necessary to enforce a Board order is the responsibility of the applicant, not the Board.

Lawful Rent

14. It was the Landlord Representative's submission that the lawful rent was \$2,000.00 and it was due on the 1st day of each month.
15. The Tenant Representative submitted that the lawful rent was \$1,850.00 a month plus utilities. This was supported by testimony from the Tenant Rupinder Sidhu at the February 16, 2023, hearing who testified that the rent was \$1,850.00 plus 30% utilities, which could fluctuate depending on the month. She also testified to not receiving any utility bills from the Landlords.
16. In response the Landlord testified that the rent was always capped at \$2,000.00 (\$1,850.00 plus \$150.00 in utilities.) This is supported by several text messages exchange between Landlord and the Tenant including one prior to the commencement of the tenancy included in the Tenants' evidence package in which the Landlord clearly stated they would pay \$2,000.00 a month.
17. Accordingly, based on the above testimony and evidence I am satisfied on the balance of probabilities that the lawful rent was \$2,000.00 a month and was due on the first day of each month.
18. The Tenant has paid \$1,800.00 to the Landlord since the application was filed.

Rent Arrears

19. The alleged rent arrears owing to January 29, 2023, are \$14,200.00.
20. It was the Tenant Representatives submission that the total arrears owing were \$6,100.00. It was their position that the Tenant had made several payments not accounted for in the Landlord's evidence, including a \$2,100.00 rent deposit in cash and that the Tenant was owed an abatement of rent based on several section 82 issues they intended to raise.
21. The Tenant testified that in April 2022 she paid a \$2,100.00 cash deposit followed by \$4,000.00 for first and last months rent by etransfer.

22. She also testified to having paid \$4,000.00 to the Landlord by cash for the June and July 2022 rent. To support this, bank statements showing withdrawals and deposits into their account were entered. It was the Tenant's position that these deposits preceded the cash payments which the Landlord demanded by text message, entered in evidence, including one in which he refused to accept etransfer.
23. The Tenant further testified to making a \$1,800.00 payment, not accounted for on November 30, 2022. A screenshot of the etransfer confirmation was entered in evidence to support this.
24. In response the Landlord Representative submitted that the evidence provided by the Tenant merely showed that money was deposited to their account and didn't support their assertion as to having paid \$4,000.00 in cash. Stating if that was indeed the case, they would be able to offer proof of withdrawing \$4,000.00. They also submitted that the evidence offered by the Tenant was questionable, as the screen shots of text messages offered no date or time and appeared to be deliberately cut and paste to support the Tenants' narrative. It was also his submission that the information provided in the L1/L9 update sheet of February 9, 2023, stood as their accounting for the rent arrears owing.
25. It was the Landlords testimony that his request for cash payments only occurred after the Tenant was late in paying the rent and he wanted cash as to ensure a complete payment. He also testified to never having received a request for receipts, stating he would have if asked.
26. Having considered the testimony and evidence I am satisfied that the L1/L9 update sheet of February 9, 2023, is an accurate accounting of the arrears owing. First, the update reflects a last month rent deposit of \$2,000.00 and the Tenant offered no proof that they paid the Landlord \$2,100.00 in advance of this payment. Secondly, I'm in agreement with the Landlord Representative the withdrawal and deposit slips provided by the Tenant do not substantiate payment of rent in cash. Further, the withdrawal and deposits made don't total \$2,000.00 for either June or July.
27. Similarly, I am satisfied on the balance of probabilities that the text messages offered as part of the Tenant evidence package do not establish that additional payments were made by the Tenants. First, as noted by the Landlord Representative, there is no date or time on the text messages. Without this information it is impossible to determine their authenticity. I spent several minutes comparing the Tenants' text messages to the text messages submitted by the Landlord to ascertain a timeline only to achieve a partial congruency. Secondly, the text messages entered by the Tenant appear to be screen shots superimposed on a screensaver and in several instances have handwritten sticky notes affixed.
28. Finally, having reviewed the L1/L9 update sheet submitted by the Landlord, its clear that the November 30, 2022, payment has been accounted for in their reconciliation as was the \$2,000.00 etransfer for the last month's rent. Accordingly, based on the above determinations, and the previously, submitted N4 Notice, I am satisfied that the total arrears owing to January 29, 2023 are \$14,200.00.
29. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

30. The Landlord collected a rent deposit of \$2,000.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.
31. Interest on the rent deposit, in the amount of \$40.96 is owing to the Tenant for the period from April 6, 2022, to January 29, 2023.

Section 82 Issues

32. The Tenant raised several tenants' rights issues pursuant to section 82 of the *Residential Tenancies Act, 2006* (the "Act").

Illegal Entry

33. The Tenant testified that she found the rental unit on Facebook and was aware that there was still some construction going on, but it was her position that for most of the month of May 2022 and on several occasions in June and August 2022 the Landlord had contractors regularly entering her rental unit, including times without notice. Copies of 11 notices of entry between May 5, 2022 to January 10, 2023 were entered in evidence
34. The Landlord didn't deny that he had contractors regularly visiting the rental unit, testifying the unit was advertised and rented to the Tenant under the understanding that it was still under construction. It was also his position that all entries were preceded by 24-hour notice. He also testified to serving such notices either by placing them under or on the door to the rental unit. Pictures of Notices placed on the door and the Landlord placing one under the door were entered in evidence.

Harassment and substantial interference

35. The Tenant testified that throughout the tenancy the Landlord regularly harassed and substantially interfered with her reasonable enjoyment by:
 - Denying the installation of their own internet;
 - Moving their belongings; and
 - Complaining about them not being vegetarian.

Internet

36. The Tenant testified that she had arranged for internet to be installed to only have the Landlord turn the installer away and to lock the panel box to prevent any further attempt. A picture of the panel box locked, and a copy of an overdue internet bill were entered in evidence. The Tenant also testified that she attempted to install her own internet due to the internet the Landlord provided constantly being offline. However, on cross examination she also testified to never asking the Landlord's permission.
37. In response the Landlord testified that he was merely exercising his rights when he turned the installer away, stating the Tenant never asked permission and stipulating the internet would go down, affecting the entire house but it would only be temporarily. He also submitted a copy of the internet bill to support his claim that it was provided as part of the rent.

Moving belongings

38. The Tenant then testified that the Landlord would regularly move their belongings and or break them when entering the rental unit. This was supported by pictures of a dish broken on the ground in the kitchen and several pictures of the Tenants' shoes and shoe rack, displaced or placed outside entered in evidence.
39. The Landlord denied breaking any of the Tenants' property and although admitted to moving the shoe rack to gain access to the door. He testified that he never placed it outside but postulated the contractors may have done so.

Complaints about them not being vegetarian

40. The Tenant testified that throughout the tenancy the Landlord would complain about them eating meat and making smells while cooking which culminated in him serving a N5 Notice to end the tenancy for interfering with others, damage or over crowding. It was also her testimony that this constant harassment resulted in her having to go to the hospital for stress. A receipt for the ambulance was entered in evidence.
41. In response, the Landlord denied ever harassing the Tenant as alleged.

Maintenance

42. The Tenant testified that in May 2022 the laundry machines stopped working and that she advised the Landlord as of May 7, 2022. The laundry wasn't repaired for several months forcing her to incur the cost of going to an outside laundromat and that once fixed she was denied the use of them, again testifying the Landlord took issue with her not being vegetarian.
43. In response the Landlord didn't deny that the laundry machine broke and that it wasn't repaired until August 2022 owing to delays in parts and service. He also testified to having never offered an alternative or compensation to the Tenant and that he never denied her use of the machines.

Remedies

44. The totality of the remedies sought by the Tenant is \$10,500.00 broken down as follows:
- a. Failure to provide internet and disallowing installation resulting in fee and 15% abatement in rent for duration of tenancy -\$2,700.00;
 - b. Illegal entry -75% of rent for May 2022 -\$1,500.00;
 - c. Harassment -25% of rent for duration of tenancy -\$4,500.00;
 - d. Failure to provide working laundry 10% of rent for duration of tenancy -\$1,800.00.

Analysis

43. Sections 22, 23 and 25 of the Act state:

22. A landlord shall not at any time during a tenant's occupancy of a rental unit and before the day on which an order evicting the tenant is executed substantially interfere with the reasonable enjoyment of the rental unit or the residential complex in which it is located for all usual purposes by a tenant or members of his or her household.

23 A landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant.

25 A landlord may enter a rental unit only in accordance with section 26 or 27.

Illegal Entry

44. Based on the testimony and evidence before me I am not satisfied that the Tenant has proven that the Landlord illegally entered the rental unit. On the contrary, the only evidence the Tenant led was that the Landlord regularly provided a notice prior to each entry which, although may have been inconvenient, within his rights as prescribed by the Act. Furthermore, the Tenant testified to knowing that the rental unit required work at the commencement of tenancy in May 2022.

Harassment and substantial interference

45. Based on the testimony and evidence I am not satisfied on the balance of probabilities that the Tenant has established the Landlord harassed or substantially interfered with the Tenants. The Tenant led no details such as dates and times to establish that internet wasn't provided contrary to what the Landlord said. Additionally, she also testified to never asking permission before seeking to have their own internet installed, Therefore I cannot find that it was unreasonable for the Landlord to turn away the installer.

46. As to their belongings, namely the shoes, shoe rack and broken plate, based on the photographic evidence I am satisfied those events occurred, but I am not satisfied the Tenants established the Landlord was at fault.

47. Finally, regarding the issue of harassment, based on the text messages entered in evidence I am satisfied that the Tenants being vegetarian was of importance to the Landlord, given the number times he asked. That said, they led no evidence to establish the Landlord engaged in threatening or harassing conduct based on the fact that Tenants were not vegetarian. Furthermore, the N5 they referred to, and entered in evidence, lacked the second page or a Schedule A, as such I cannot determine if the substance of the N5 constituted harassment.

48. Similarly, the Tenant led no evidence to support their claim that their visit to the hospital was a direct result of the Landlord's actions. The only evidence she led was a bill, with no supporting evidence to substantiate the stress alleged.

Maintenance

49. Section 20(1) of the Act states that 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.
50. 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.
51. Applying this test to the circumstances here, I am satisfied that the Tenant has proven that the Landlord failed to maintain the rental unit in a good state of repair. More specifically, the Landlord did not address the issue of the broken laundry machine in a reasonable or efficient manner.
52. The Landlord never disputed the machine broke nor that the Tenant was without laundry facilities for an extended period. Furthermore, the Landlord testified that he never offered an alternative or compensation. Accordingly, I am satisfied he breached his obligations under section 20(1) of the Act and the Tenant is entitled to the abatement for the period of May to August 2022.
53. I'm not satisfied the Tenant established the Landlord prevented her from using the laundry machine once it was fixed. Therefore, I am not satisfied she is entitled to abatement beyond August 2022.

Remedies

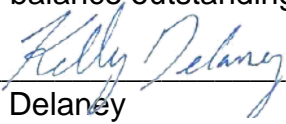
25. Based on the determinations above, including consideration of the impact of the Landlord's breach upon the Tenants' ability to use and enjoy the rental unit, I am satisfied that the Tenants are entitled to an abatement of rent equal to 10% of the rent payable during the period of May 2022, to August 2022 (**\$800.00**) due to the Landlord's failure to address the issue of the laundry machine .

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated as of January 29, 2023, the date the Tenants moved out of the rental unit .
2. The Tenants shall pay to the Landlord \$11,545.04. This amount includes rent arrears owing up to the date the Tenant moved out of the rental unit and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.

3. If the Tenants do not pay the Landlord the full amount owing on or before October 27, 2023, the Tenants will start to owe interest. This will be simple interest calculated from October 28, 2023 at 6.00% annually on the balance outstanding.

October 16, 2023
Date Issued



Kelly Delaney
Member, Landlord and Tenant Board

15 Grosvenor St, 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.

**Schedule 1
SUMMARY OF CALCULATIONS**

A. Amount the Tenants must pay as the tenancy is terminated

Rent Owing To Move Out Date	\$16,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,800.00
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	- \$2,000.00
Less the amount of the interest on the last month's rent deposit	- \$40.96
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$800.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$11,545.04