



Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

Citation: BAQI v LAJOIE, 2023 ONLTB 14781

Date: 2023-01-30

File Number: LTB-L-074761-22-RV
(formerly EAL-95414-21)

In the matter of: B, 114 JARVIS STREET
CORNWALL ONTARIO K6H5J2

Between: Abdul Baqi Landlord

And

Olivier Lajoie Tenant

2023 ONLTB 14781 (CanLII)

Your file has been moved to the Landlord and Tenant Board’s new case management system, the Tribunals Ontario Portal. Your new file number is LTB-L-074761-22.

Review Order

Abdul Baqi (the 'Landlord') applied for an order to terminate the tenancy and evict Olivier Lajoie (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order EAL-95414-21 issued on May 3, 2022.

On May 13, 2022, the Tenant requested a review of the combined order for EAL-95414-21 and EAL-95527-21 and that the order be stayed until the request to review the order is resolved.

On May 13, 2022, combined interim order for EAL-95414-21 and EAL-95527-21 was issued, staying the order issued on May 3, 2022, pending the completion of a preliminary review.

On June 21, 2022, interim order EAL-95414-21-RV-IN2 was issued, staying the order issued on May 3, 2022, pending a review hearing.

This application was heard in by videoconference on August 16, September 2, and October 20, 2022.

The Agent James Moak appeared at the hearings on behalf of the Landlord’s Legal Representative Denis Sabourin.

The Landlord and the Tenant attended throughout.

The Tenant spoke with Duty Counsel.

The hearing was assisting by French language interpreters Suzanne Aubin and/or Linda Rochon

Determinations:

1. The underlying application is an application for arrears of rent. The Tenant has been deliberately withholding rent due to maintenance issues.
2. The Tenant alleged in the request for a review that he was not permitted to make submissions pursuant to sub-section 83(3)(a) of the *Residential Tenancies Act, 2006* (the 'Act') that the Landlord was in serious breach of a Landlord's responsibilities under the Act; and this was a serious error.
3. The Tenant submitted at the hearing, that it was an error that the Board did not invite and consider submissions under sub-section 83(3)(a) of the Act, to determine if mandatory relief from eviction should be granted.
4. The Landlord submitted that there was no error; that the Tenant had been fully able to participate in the L1 portion of the hearing and to make submissions.
5. I have reviewed the order issued on May 3, 2022 and listened to the recording.
6. I am satisfied on a balance of probabilities that the Board did err by not specifically seeking submissions with regards to sub-section 83(3)(a) to determine if the maintenance allegations might warrant granting relief from eviction. Therefore, The board granted the request for review.
7. 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.
8. As of the hearing date, the Tenant was still in possession of the rental unit.
9. The lawful rent is \$900.00. It is due on the first day of each month.
10. Based on the Monthly rent, the daily rent/compensation is \$29.59. This amount is calculated as follows: \$900.00 x 12, divided by 365 days.
11. The Tenant has not made any payments since the application was filed.
12. The rent arrears owing to January 31, 2023 are \$19,800.00, (less any payments made since the last hearing on October 20, 2022)
13. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
14. The Landlord collected a rent deposit of \$900.00 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.

15. The Tenant submitted that the Landlord was in serious breach of the Landlord's obligations under the Act. Specifically, that the Landlord had failed to address the following maintenance issues:
 - a. Presence of a substance that appeared to be mould.
 - b. Broken water pump.
 - c. Damage to washing machine.
 - d. Threatening the Tenant with a "screwdriver".
 - e. Rodent infestation.
 - f. Flee infestation.
 - g. Lighting in the rental unit does not work.
 - h. Water leak emanating from upstairs apartment.
 - i. Issues with hot water.
 - j. The Landlord broke the pipes such that the Tenant cannot flush the toilet.
 - k. Presence of a "crack" in the basement.
 - l. City of Cornwall Building Inspector issued a property standards order listing all deficiencies in the residential complex.

16. The City of Cornwall building inspector Jack Macdougall testified regarding the conditions in the building as reflected in his report dated August 4, 2021. He stated that there are major property standard issues with the residential complex, however the City of Cornwall was not taking any steps to enforce compliance with their order to repair due to the ongoing Landlord/Tenant dispute. The report reflects the observations and testimony of Jack Macdougall that the building needs work to resolve lighting, water leaks, mold, stairs issues, electrical issues, issues with door frames and general damage to walls and foundation. He also brought in a plumbing building official and the fire prevention officers. In total the report lists 8 property standards violations that require remedy. In addition, the City of Cornwall has declared the residential complex uninhabitable.

17. The Board reviewed all of the photos submitted by the Tenant. In general, these supported the allegations contained in the City of Cornwall property standards report.

18. The city inspector also testified that the Landlord had made some repairs, the water leaks in laundry room and some mould had been cleaned. In order to determine if there is a serious breach, the breach must still be continuing at the time the eviction application is heard. In this instance, I was satisfied that the Landlord may have repaired or attempted to make some repairs to resolve them before the eviction proceedings began. Others remained.

19. The Landlord also provided other photos to show that the rental unit was clean and in a good state or report. These can be found in document "Abdul Baqi Photo evidence".

20. The Act does not define "serious breach".

21. The leading case that states the test for “serious” breach is *Puterbough v. Canada Public Works and Government Services*) [2005] O.J. No 5727 [hereinafter *Puterbough*]. In the *Puterbough* case, the decision states that “serious breach”, in the context of the Landlord’s maintenance responsibilities: means more than the rental premises being in poor condition and in need of significant work... in short, a serious breach of the landlord’s responsibilities is not established simply by the rental premises being in need of extensive repairs.
22. In *Puterbough* despite evidence of extensive disrepair to the rental properties in question, including evidence that properties would have to be demolished, the Divisional Court determined that the landlord was not in “serious” breach of its maintenance obligations.
23. Read in context, the goal of sub-section 83(3)(a) of the Act is to ensure that landlords cannot resort to the eviction of tenants as a method of abdicating or sidestepping their mandated responsibilities under the Act. The Court also stated that “To accept the Tenant’s argument that all breaches of the Landlord’s responsibilities that raise health and safety concerns trigger subsection 83(3)(a) of the Act would render meaningless the word ‘serious in that subsection’.
24. Based on the Tenant’s evidence, I conclude that, although the Landlord is in breach of his maintenance obligations, the breach is not “serious”. The Tenant nevertheless continues to reside in the rental unit with his pets notwithstanding his concerns and continues to use the rental unit for all normal purposes. I therefore conclude that the Landlord’s breaches of his duties under the Act or the tenancy agreement, are not *serious*, and conclude that it would be inappropriate to deny the Landlord’s eviction application pursuant to subsection 83(3) of the Act.
25. The Tenant testified that he refuses to pay rent due to the ongoing maintenance issues as set out in his T6 application and accompanying T2 application. These remain to be heard and a determination on compensation remains to be determined. As such it would be reasonable to restrict the Landlord from pursuing the arrears of rent in any other court of competent jurisdiction until those applications have been heard.
26. A Tenant is obliged to pay the lawful rent in full and on time, unless granted permission by the Board to pay the lawful rent into the Board.
27. The Landlord testified that he intends to obtain the necessary permits and to undertake repairs once the Tenant vacates. I note that the City of Cornwall appears to be in agreement with this approach as they have not taken action to otherwise pursue the Landlord for the property standards violations. Therefore, for this reason as well, the Board finds on a balance of probabilities that the Landlord is not attempting to sidestep his obligations under the Act; rather he is prevented from doing so by the presence of the Tenant residing in the rental unit.

28. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and in particular, the section of the Municipal Order that states that the unit is not to be considered a habitable space until the health hazards in the unit have been resolved. It would defy common sense to delay the eviction and allow the Tenants to continue to expose themselves to the health risks associated with mould in this context. I therefore find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

1. The request to review order EAL-95414-21 issued on May 3, 2022 is granted. The order is cancelled and replaced by this order.
2. The June 21, 2022, interim order EAL-95414-21-RV-IN2 is cancelled.
3. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
4. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 1. \$19,986.00 if the payment is made on or before January 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

2. \$20,886.00 if the payment is made on or before February 10, 2023. See Schedule 1 for the calculation of the amount owing.
5. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after February 10, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
6. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before February 10, 2023**
7. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$1,086.00. 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.
8. The Tenant shall also pay the Landlord compensation of \$29.59 per day for the use of the unit starting February 1, 2023 until the date the Tenant moves out of the unit.
9. If the Tenant does not pay the Landlord the full amount owing on or before February 10, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 11, 2023, at 5.00% annually on the balance outstanding.

10. The Landlord may not take any steps to enforce collection of the arrears of rent pending the completion of the hearing of the Tenant applications EAT-96492-21 and EAT-96493-21. At that time any compensation payable to the Tenant should be deducted from the total arrears of rent owing. This does not prevent the Tenant from paying some or all of the arrears pending the outcome of the Tenant applications.
11. If the unit is not vacated on or before February 10, 2023, then starting February 11, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
12. 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 February 11, 2023.

January 30, 2023

Date Issued

Robert Patchett

Vice Chair, 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 August 11, 2023 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 to void the eviction order and continue the tenancy if the payment is made on or before January 31, 2023

Rent Owing To January 31, 2023. (less any amount paid by the Tenant since October 20, 2022)	\$19,800.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
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	- \$0.00
Total the Tenant must pay to continue the tenancy	\$19,986.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before February 10, 2023

Rent Owing To February 10, 2023 (less any amount paid by the Tenant since October 20, 2022)	\$20,700.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
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	- \$0.00
Total the Tenant must pay to continue the tenancy	\$20,886.00

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C. Amount the Tenant must pay if the tenancy is terminated

Rent Owing To January 31, 2023 (less any amount paid by the Tenant since October 20, 2022)	\$19,800.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	- \$900.00
Less the amount of the interest on the last month's rent deposit	- \$0.00
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	- \$0.00
Total amount owing to the Landlord	\$19,086.00
Plus daily compensation owing for each day of occupation starting February 1, 2023	\$29.59 (per day)

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