



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

Citation: Desouza v Aguinaldo, 2023 ONLTB 18743

Date: 2023-02-09

File Number: LTB-L-070409-22

In the matter of: MAIN/FRONT UNIT, 3428 PALGRAVE RD
MISSISSAUGA ON L5B2H1

Between: Anil Desouza Landlord

And

Crista Aguinaldo Tenant

Anil Desouza (the 'Landlord') applied for an order to terminate the tenancy and evict Crista Aguinaldo (the 'Tenant') because:

they, another occupant of the rental unit or a person the Tenants permitted in the residential complex have seriously impaired the safety of any person.

The Landlord also applied for compensation for unpaid utility costs the Tenant owes.

This application was heard by videoconference on February 1, 2023.

The Landlord and the Landlord's Representative, Chris Tonks attended the hearing. The Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. The Board sent the notice by email to the Tenant on January 18, 2023 which was verified by the Landlord to be correct. The Landlord's Representative also sent a copy of the Notice of hearing the application and submissions/evidence on January 20, 2023 and a process server was engaged on January 23, 2023, who left the same material in the Tenant's mailbox since the Tenant was not home. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy. Therefore the application for eviction based on the N7 Notice is dismissed. I find however, the Tenant is responsible for 50% utility costs and the Landlord is entitled to compensation for unpaid utility costs.
2. The Tenant is in possession of the rental unit on the date the application was filed.

Impairment of safety:

3. The N7 Notice is based on the Tenant refusing to turn on the air conditioner and furnace from September 2022 to November 2022. The Landlord testified the technician did not

enter the unit to check the thermostat but checked the furnace in the complex and verified it was in proper functioning order. The Landlord relies on temperature readings from a complaining tenant taken from within her unit (back unit of the complex) on Nov 7, 2022 - 3 degrees Celsius, November 8, 2022 - 1 degree Celsius, November 10, 2022 – 10 degrees Celsius and November 14, 2022 of 4 degree Celsius. Temperatures outside and within the unit are reported to be above zero and the complaining tenant was given a heater. The Landlord also provided a photograph of the Tenant's window left open on December 10, 2022 which was after the N7 Notice was given.

4. Based on the evidence, I do not find that the Tenant seriously impaired the safety of another person as temperatures in and outside the unit were above zero and there was no harm or real risk to a person's safety. Regarding eviction for serious impairment of safety under s. 66 of the *Act*, the Divisional Court confirm in *Furr v. Courtland Mews Cooperative Housing Inc.*, that "impairment" of safety includes both actual impairment and a real risk of impairment. However, the Court added that it is an error to ground a ruling on speculation about future conduct.

Application for Utility Costs:

5. The tenancy agreements indicate the Tenant is responsible for 50% of the costs of the utilities. The Landlord presented an email dated October 27, 2022, from the Region of Peel which summaries the outstanding unpaid utility for water which has been transferred to the Landlord's property taxes incurred from June 1, 2022 to October 27, 2022 in the amount of \$1039.05, and a further billing was outstanding in the amount of \$475.18 as of November 11, 2022. The Tenant has substantially interfered with the Landlord's interests, as the costs has been transferred to the Landlord's property taxes which interferes with the Landlord's interests. The Tenant owes the Landlord compensation of \$757.12 which is 50% of the unpaid water charges of \$1,514.23.
6. The Board has no authority to order the Region's administrative fee of \$35.00.
7. The Landlord was told by the technician he couldn't enter the Tenant's unit to check the thermostat. The Landlord is seeking out of pocket expenses of \$109.99 for the service rendered on November 16, 2022. I'm not prepared compensate the Landlord the costs when the Landlord pays insurance and was not present to allow the technician into the Tenant's unit when she didn't answer the door given, he gave the Tenant a notice of entry. Hearsay evidence from the technician that the Tenant was home is uncorroborated by other evidence for the technician.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

It is ordered that:

1. The Tenant shall pay to the Landlord \$757.12 for unpaid utilities incurred from June 1, 2022 to November 11, 2022.
2. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
3. The total amount the Tenant owes the Landlord is \$943.12.

4. If the Tenant does not pay the Landlord the full amount owing on or before February 20, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 21, 2023 at 5.00% annually on the balance outstanding.

February 9, 2023

Date Issued

Sandra Macchione
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.