



Order under Section 69
Residential Tenancies Act, 2006

File Number: TSL-09849-19
TST-07649-19

In the matter of: BASEMENT, 249 WELLESLEY STREET E
TORONTO ON M4X1G8

Between: Hari Haran Landlord

and

Joshua Westover Tenants
Zack Malins-Bush

In TSL-09849-19, Hari Haran (the 'Landlord') applied for an order to terminate the tenancy and evict Joshua Westover and Zack Malins-Bush (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe (the 'L1 application').

In TST-07649-19, the Tenants applied for an order determining that the Landlord had failed to meet the Landlord's maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards (the 'T6 application').

These applications were heard together by way of a video conference on January 11, 2021. The Landlord attended the hearing. The Tenant Zack Malins-Bush ('ZMB') attended the hearing on behalf of the Tenants, along with the Tenants' Agent, Patricia Bush.

Determinations:

L1 application

1. The Tenants have not paid the total rent the Tenants were required to pay for the period from June 1, 2019 to September 30, 2019. Because of the arrears, the Landlord served a Notice of Termination effective August 20, 2019.
2. The Tenants were in possession of the rental unit on the date the application was filed.
3. The monthly rent is \$1,221.00.
4. The Landlord collected a rent deposit of \$1,200.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit is owing to the Tenants for the period from September 1, 2017 to August 20, 2019.

5. The Tenants paid \$2,535.00 to the Board in trust after the application was filed.
6. The Tenants gave vacant possession of the rental unit to the Landlord on September 30, 2019.
7. In the L1/L9 update form, the Landlord also claimed rent for the months of October 2019 and November 2019 as the Tenants vacated the rental unit without giving notice to the Landlord. The Board's Interpretation Guideline 11 addresses this issue and states the following:

In some cases, the evidence may establish that the tenant moved out of the rental unit after the application was filed, but before the hearing date. In that case, the Board's order will generally include a determination that the tenancy ended on the date the tenant moved out. Further, the order will generally: (1) end the tenancy effective the date the tenant moved out of the rental unit without ordering enforcement through the Sheriff's Office; and (2) require the tenant to pay arrears up to the date specified in the termination notice, and lump sum compensation for use of the unit from the termination date in the notice to the date the tenancy ended.

8. In this case, the tenancy ended on September 30, 2019, the date on which the Tenants gave vacant possession of the rental unit to the Landlord. While the Board's Interpretation Guidelines are not binding upon me, I see no reason to depart from them in this instance. As such, the Landlord shall be awarded arrears and compensation up to September 30, 2019.

T6 application

9. The Tenant's application alleges that the Landlord failed to address two major issues with respect to the rental unit, the presence of bedbugs and flooding at the rental unit, which finally led to the Tenants vacating the rental unit on September 30, 2019.
10. The Tenants sought a rent abatement of 100%, in the amount of \$13,200.00, as compensation for the Landlord's alleged failure to address the issue of bedbugs and ongoing flooding at the rental unit. The Tenants also claimed damages of \$3,000.00 for property that had to be replaced and \$535.00 for out-of-pocket expenses that had to be incurred by the Tenants.
11. Pursuant to subsection 20(1) of the Act, 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.

Bedbug infestation

12. ZMB testified that he became aware of the bedbug infestation in August 2018 and notified that the Landlord immediately of this fact. An individual named Hannah was ZMB's

roommate at the rental unit at the time; Hannah vacated the rental unit in November 2018.

13. ZMB submitted that the Landlord did not take reasonable steps to address this issue after being notified of the presence of bedbugs. ZMB stated that the Landlord only employed the property manager, Scott McDonald, to spray the unit and that this was ineffective. ZMB stated that he had to purchase a new couch, a new bed, spray cans, and had to throw out some of his clothes as a result of the Landlord's failure to address the issue of bedbugs. ZMB also testified that he had to endure emotional and physical duress as a result of this. ZMB testified that the Tenants also withheld the rent for June 2019 due to the Landlord's failure to address this issue.
14. It is important to note that the Act does not provide any authority to the tenants to withhold rent payments in order to compel specific performance by a landlord. I note that the Tenants filed the T6 application in June 2019, which is the action that is contemplated by the Act to address maintenance disputes between parties.
15. In response, the Landlord stated that he had owned the residential complex for nearly fifteen years and had never had a bedbug infestation until ZMB's former roommate Hannah had allegedly brought furniture 'from the street' into the rental unit. The Landlord alleged that this was the cause of the bedbug infestation.
16. The rental unit is the basement unit in a building that has multiple units. In the absence of expert testimony, I am unable to determine, on a balance of probabilities, that the Tenants or another occupant of the rental unit caused the bedbug infestation at the rental unit.
17. The Landlord testified that after being advised of the infestation in August 2018, he contacted Orkin, a pest control company, on August 29, 2018 to investigate and resolve the issue. Prior to doing so, the Landlord testified that the unit had been sprayed by the property manager, Joe Hyter. Upon investigating the rental unit, Orkin advised him that they had not been able to find any evidence of bedbugs at the rental unit.
18. Subsequently, pursuant to the Tenants' continued reports, the Landlord employed Humber Pest Control on October 18, 2018 to spray the unit on three occasions. Humber Pest Control sprayed the unit accordingly, but also advised the Landlord that the Tenants were not adhering to the cleanliness protocols required to address the issue comprehensively. According to the Landlord, the issue seemed to stabilize somewhat between October 2018 and June 2019, when the Tenants reported that the situation had started to deteriorate again. As a result, on July 20, 2019, the Landlord employed Pest End, another pest control company, to treat the entire building. This was completed three times, with the final treatment taking place on September 10, 2019. The Landlord advised that the Tenants continued to report that the issue of bedbugs persisted at the unit and ultimately, vacated the rental unit on September 30, 2019.
19. In determining the issue of whether the Landlord breached its maintenance obligations under the Act, I am bound by the Ontario Court of Appeal's decision in *Onyskiw v. CJM*

Property Management Ltd. (2016 ONCA 477), where the Court determined that a landlord is not automatically in breach of their maintenance obligations as soon as a problem arises, and that a contextual approach is necessary in determining whether a landlord has breached its maintenance obligations under the Act. The Court stated that such an approach involves a consideration of the “entirety of the factual situation” before determining that a landlord is in breach of their maintenance obligations.

20. In this instance, I am satisfied that the Landlord took reasonable steps to address the bedbug infestation at the rental unit upon being advised of this issue by the Tenants. The issue of bedbugs first arose in August 2018. The Landlord hired pest control companies in August and October 2018 to treat the issue. I find that the issue stabilized for a period of time, as the Tenants did not take any further steps to resolve the issue until June 2019, when the Tenants withheld their rent payment and filed the T6 application. In response, the Landlord had the unit treated again between July 2019 and September 2019 by another pest control company. The actions on the Landlord’s part were reasonable and timely. As such, I find that the Landlord was not in breach of its obligations under section 20(1) of the Act.
21. I note that I am not satisfied, on a balance of probabilities and in the absence of direct evidence by an expert or an individual who actually treated the unit, that the Tenants were either responsible, or in some way created barriers, for the Landlord to address the issue of bedbugs effectively.

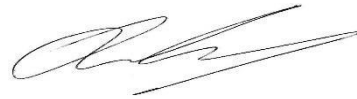
Flooding at the rental unit

22. Regarding the alleged flooding at the rental unit, ZMB testified that sometime after March 2019, there was regular flooding in the boiler room area of the rental unit. ZMB testified that the water leaked into his bedroom.
23. In response, the Landlord alleged that the sump pump at the rental unit was frequently clogged as the Tenants would regularly flush condoms down the toilet, despite the Landlord’s warnings not to do so, and that this had resulted in the flooding alleged by the Tenants. The Landlord stated that Scott McDonald, the property manager at the rental unit, had advised him of this fact. Nevertheless, upon being advised of the flooding issue, the Landlord stated that he had replaced the old sump pump with a more expensive sump pump that had the ability to grind rubber material.
24. In the absence of direct evidence of someone who examined the sump pump in question and has some expertise in determining the cause of the flooding, I am not able to find, on a balance of probabilities, that the Tenants were directly or indirectly responsible for the flooding at the rental unit. Nevertheless, I am satisfied that the Landlord took reasonable steps to address the issue of flooding at the rental unit by having the property manager investigate the issue and ultimately, by replacing the sump pump in question.
25. As I am not able to find that the Landlord was in breach of its maintenance obligations under section 20(1) of the Act, the Tenants’ T6 application is dismissed.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated as of September 30, 2019, the date the Tenants gave vacant possession of the rental unit to the Landlord. The amount of \$2,535.00 plus accrued interest shall be paid out to the Landlord.
2. The Tenants shall pay to the Landlord \$1,115.43*, which represents the amount of rent owing and compensation up to September 30, 2019, less the rent deposit and interest the Landlord owes on the rent deposit.
3. The Tenants shall also pay to the Landlord \$175.00 for the cost of filing the application.
4. If the Tenants do not pay the Landlord the full amount owing* on or before June 13, 2021, the Tenants will start to owe interest. This will be simple interest calculated from June 14, 2021 at 2.00% annually on the balance outstanding.
5. The Board shall pay to the Landlord the amount of \$2,535.00 together with any accrued interest.

June 2, 2021
Date Issued



Arnab Quadry
Member, Landlord and Tenant Board

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Toronto ON M7A 2G6

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: TSL-09849-19

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

Reasons for amount owing	Period	Amount
Arrears: (up to the termination date in the Notice of Termination)	June 1, 2019 to August 20, 2019	\$3,246.44
Less the amount the Tenants paid to the Board in trust		-\$2,535.00
Plus compensation: (from the day after the termination date in the Notice to the date the Tenants vacated the unit)	August 21, 2019 to September 30, 2019	\$1,646.56
Less the rent deposit:		-\$1,200.00
Less the interest owing on the rent deposit:	September 1, 2017 to August 20, 2019	-\$42.57
Amount owing to the Landlord on the order date:(total of previous boxes)		\$1,115.43
Additional costs the Tenants must pay to the Landlord:		\$175.00
Total the Tenants must pay the Landlord as the tenancy is terminated:		\$1,290.43

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