



**Order under Sections 30 and 69
Residential Tenancies Act, 2006**

Citation: Thambirajah v Reynolds, 2023 ONLTB 38161

Date: 2023-05-18

File Number: LTB-L-023492-23

LTB-T-004956-23

In the matter of: UPPER UNIT, 1391 TINY BEACHES RD N
TINY ON L9M0H3

Between: Kayathiri Thambirajah Landlord

And

Alexander Mason, Brooke Reynolds and Grant A. Mason Tenant

Kayathiri Thambirajah (the 'Landlord') applied for an order to terminate the tenancy and evict Alexander Mason, Brooke Reynolds and Grant A. Mason (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlord also applied for an order to terminate the tenancy and evict the Tenant because the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant and because the Tenant has been persistently late in paying the Tenant's rent.

The Tenant applied for an order determining that the Landlord 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.

These applications were heard by videoconference on May 10, 2023.

The Landlord, the Landlord's legal representative, Erli Bregu, Alexander Mason (AM), and Brooke Reynolds (BR) attended the hearing

Determinations:

1. With respect to the Landlord's applications, the parties agreed to terminate the tenancy as of May 15, 2023.
2. The parties also agreed that the arrears owing to May 31, 2023 are \$10,500.00, that the Landlord collected a rent deposit of \$1,600.00 from the Tenant, and that this deposit is still being held by the Landlord.

3. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
4. Interest on the rent deposit, in the amount of \$33.99 is owing to the Tenant for the period from January 1, 2021 to May 15, 2023.
5. The parties contested the Landlord's claim for \$725.00 with respect to blockage of the inlet pipe to the septic tank resulting from wipes being flushed down the toilet/toilets in the residential complex. The Landlord alleged that the Tenant flushed wipes down the toilet and caused the blockage. AM and BR said that they did not flush wipes down the toilet. The parties agreed that the septic tank services the rental unit and another rental unit in the residential complex.
6. I am not satisfied that the Landlord has proven on a balance of probabilities that the Tenant caused the blockage in the inlet pipe to the septic tank. As a result, this portion of the Landlord's application is dismissed.
7. With respect to the Tenant's application, AM and BR testified that the Landlord was notified on February 14, 2021 that their master bathroom shower leaked into the downstairs rental unit. They said they could only use this shower intermittently because of this problem and that they ultimately used it one quarter of the time. They testified that the Landlord's contractor ripped out the master bathroom walls on September 6, 2022 to address the problem, but the work was not completed and they did not have any use of the bathroom since that time.
8. AM and BR also testified that there was "mould" forming on the brickwork of the fireplace and that they notified the Landlord of this issue on May 30, 2022 when the Landlord attended the rental unit. They say that the Landlord never addressed this issue.
9. Although it was confirmed in cross-examination that AM and BR did not submit evidence that the Landlord was notified of these problems in writing, the Landlord did not testify or provide any other evidence to counter the Tenant's claim about the existence of these problems or that the Landlord was told about them. As a result, I find that the Tenant has established on a balance of probabilities that these problems existed and that the Landlord was aware of them on the dates specified above. I find this constitutes a breach of the Landlord's obligations under subsection 20(1) of the Act to repair or maintain the rental unit.
10. I find it appropriate to award the Tenant a 15% rent abatement for the period September 9, 2022 to May 15, 2023 for loss of use of the master bathroom (i.e. $\$1,600.00 \text{ monthly rent} \times 12 \text{ months} \div 365 \text{ days} \times 248 \text{ days} \times 0.15 = \$1,956.72$) and a 3.75% rent abatement for the period December 8, 2021 to September 8, 2022 for reduced use of the master bathroom (i.e. $\$1,600.00 \text{ monthly rent} \times 12 \text{ months} \div 365 \text{ days} \times 274 \text{ days} \times 0.0375 = \540.47). I find these amounts to be appropriate having regard to similar cases and the fact that the Tenant had another bathroom in the rental unit which could be used.
11. I also find it appropriate to award the Tenant a 2% abatement for the period May 30, 2022 to May 15, 2023 for the "mould" forming on the brickwork of the fireplace (i.e. $\$1,600.00 \text{ monthly rent} \times 12 \text{ months} \div 365 \text{ days} \times 385 \text{ days} \times 0.02 = \405.02). I find this to be the appropriate amount because it was not established what the substance was that was forming on the brickwork of the fireplace. Although the Tenant alleged it was mould, there

was no supporting evidence to establish this. Having said that, discolouration on the brickwork is a maintenance issue that the Landlord ought to have addressed.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before May 15, 2023.
2. If the unit is not vacated on or before May 15, 2023, then starting May 16, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. 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 May 16, 2023.
4. The Tenant shall also pay the Landlord compensation of \$52.60 per day for the use of the unit starting May 16, 2023 until the date the Tenant moves out of the unit.
5. The Tenant shall pay to the Landlord \$5,338.80. This amount includes rent arrears owing up to May 15, 2023 and the cost of filing the application. The rent abatement, rent deposit, and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
6. If the Tenant does not pay the Landlord the full amount owing on or before May 28, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 29, 2023 at 6.00% annually on the balance outstanding.

May 18, 2023
Date Issued



Richard Ferriss
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.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on November 16, 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 as the tenancy is terminated

Rent Owing To May 15, 2023	\$9,689.00
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	- \$1,600.00
Less the amount of the interest on the last month's rent deposit	- \$33.99
Less the amount the Landlord owes the Tenant for an abatement	- \$2,902.21
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$5,338.80
Plus daily compensation owing for each day of occupation starting May 16, 2023	\$52.60 (per day)