



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

**Citation:** Milad v Lincourt, 2023 ONLTB 23594

**Date:** 2023-03-10

**File Number:** LTB-L-023270-22

LTB-L-001606-21

LTB-T-003418-22

2023 ONLTB 23594 (CanLII)

**In the matter of:** Basement, 206 ARNOLD AVE  
THORNHILL ON L4J1B9

**Between:** Naguib Milad Landlord

**And**

Francois Lincourt Tenant

Naguib Milad (the 'Landlord') applied for an order to terminate the tenancy and evict Francois Lincourt (the 'Tenant') because:

- The Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year (L2 Application); and
- The Tenant did not pay the rent that the Tenant owes (L1 Application).

The Tenant applied for an order to determine that the Landlord substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of the Tenant's household in that the Landlord had failed to address ongoing issues with the heat, had illegally entered the rental unit and harassed them. (T2 Application)

The Tenants also 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 in that the Landlord failed to provide a vital service in the form of heat (T6 Application).

These applications were heard by videoconference on February 21, 2023 at 09:00 am.

The Landlord Representative Bruce Parsons, the Landlord and the Tenant attended the hearing.

**Preliminary Issue:**

1. At the outset of the hearing the Landlord Representative requested permission of the Board to withdrawal their L2 Application because the Tenant had vacated the rental unit on May 15, 2022. I consented to the Landlord's request.

**Determinations:**

L1 Application

1. 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.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The Tenant vacated the rental unit on May 15, 2022. Rent arrears are calculated up to the date the Tenant vacated the unit.
4. The lawful rent is \$1,980.00. It was due on the 1st day of each month.
5. The Tenant has not made any payments since the application was filed.
6. The Landlord's evidence is that rent arrears owing to May 15, 2022 are \$17,620.00.
7. The Tenant disputed the amount of arears owing. He testified that there was a period of several months in which he paid the rent in cash directly to the Landlord and did not receive a receipt.
8. Given the lack of any substantive evidence to support the Tenant's claims that he made additional cash payments to the Landlord, such as receipts or bank statement to support cash withdrawals or payments, I am not satisfied on the balance of probabilities that the Tenant made additional payments which are not included in the Landlord's evidence.
9. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
10. The Landlord collected a rent deposit of \$1,900.00 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.
11. Interest on the rent deposit, in the amount of \$103.24 is owing to the Tenant for the period from March 6, 2018 to May 15, 2022.

T6 Application

12. The Tenant testified that he moved into the rental unit in February 2017 and the rental unit consisted of one of two fully enclosed rental units located in the basement of the Landlord's house and that the Landlord resided on the main and upper floors.

13. The Tenant testified that from September 2021 to April 2022 he had called the Landlord several times to complain about a lack of heat in their unit. The thermostat for the entire house was located on the main floor of the house solely under the control of the Landlord. Having not received a reply from the Landlord, the Tenant contacted the City of Vaughn By-Law enforcement to complain about the issue. This was supported by email correspondence between the Tenant and the City of Vaughn entered in evidence. However, the correspondence didn't provide any details regarding actions taken.
14. It was the Tenant's evidence that the average temperature in the rental unit, during the winter months, was 17 degrees. This was supported by a screenshot from the Tenant's phone using a thermometer application. It was the Tenant's position that this was below the acceptable municipal standard and was the reason that he was forced to stay with his friend Barry Kruger, which was substantiated by Barry Kruger's testimony.
15. In response the Landlord testified that he was travelling outside of Canada for the period in question and that he had called his property manager Tamar Kveladze to go check the status of the thermostat. This was confirmed by Tamar Kveladze testimony who testified that when she checked the temperature on the thermostat it read 20 degrees. This was supported by a picture from her phone entered in evidence.
16. The Landlord also testified that he had provided the Tenant with a space heater, which the Tenant didn't contest. The Landlord's property manager Tamar Kveladze also testified that the same day she checked the Temperature of the thermostat she also checked the rental unit and confirmed that the Tenant not only had one but three space heaters in operation and did not find the rental unit to be overly cold.
17. On cross examination the Tenant didn't dispute that he only attempted to call the Landlord and may have attempted contacting him by email once or twice and it was after this that the Landlord contacted the property manager. The Tenant also didn't dispute that he had failed to enter in evidence anything to substantiate his claims that the Landlord was unresponsive or took no action.

#### Analysis

18. Section 20(1) of the *Residential Tenancies Act, 2006* (the "Act") states:

**20 (1)** 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.

19. In *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477, the Court of Appeal held that it is necessary to take a contextual approach to determining whether a landlord has breached its maintenance obligations under section 20(1) of the Act and a landlord will not be found liable for such a breach if the landlord responded to the maintenance issue reasonably in the circumstances.
20. Applying this test to the circumstances here I am not satisfied on the balance of probabilities that the Landlord failed to meet their obligations under the Act or failed to

comply with health, safety, housing or maintenance standards. Specifically, there is no evidence that the furnace in the rental unit was not functioning properly or was incapable of providing sufficient to the rental unit. The Tenant entered correspondence with the City of Vaughn but it does not detail the subject or the results of any inspection of the rental property. I accept that if the temperature on the main floor was 20 degrees that the temperature in the basement rental units would be a few degrees less. However, I am also satisfied based on the evidence of the Landlord and the property manager that the Tenant was provided with a space heater.

T2 Application

Tenant's evidence

21. The Tenant testified that in mid 2018 the Landlord threatened to force him to move out unless he pay \$2,600.00 in rent and it was only after he informed the Landlord that the authorized rate increase for that year was 1.8 % that they agreed on increasing the rent from \$1,945.00 to \$1,980.00 a month.
22. The Tenant also testified that during the tenancy he discovered that the Landlord had illegally entered his rental unit. One of these times he was away and discovered the Landlord had entered when he found a on his door upon returning. It was around this time that he also discovered damage to his car and assumed it was the Landlord's fault. Similarly, he was forced to pay the towing fee for when the Landlord had a truck belonging to a security technician truck towed from the driveway while the Tenant was having security cameras installed.
23. It was the Tenant's testimony that in August 2021 the Landlord substantially interfered with his reasonable enjoyment when while he was entertaining his girlfriend the Landlord came down banging on the window and door to the unit complaining that they were being too loud. This caused the Tenant and his girlfriend to fear for their lives and as a result his girlfriend refused to return to his place and the relationship ended.
24. The Tenant also testified that after the Landlord had served him a N12 notice that the Landlord frequently had realtors or rather his agents presenting themselves as realtors entered the rental unit, interfering with his reasonable enjoyment.
25. It was also the Tenant's testimony that between 2020 and May 2022 when he moved out the Landlord had called the police on several occasions and had filed several frivolous lawsuits against the Tenant forcing him to pay thousands of dollars in legal fees and that it was out of a desire to avoid further such lawsuits that he moved out.

Landlord's evidence

26. The Landlord denied ever threatening the Tenant with forcing him to move out over a rent increase. Likewise, he denied the alleged incident in August 2021 ever occurred or that he ever damaged the Tenant's car.
27. Regarding the alleged illegal entry, the Landlord testified that he always placed or had the property manger place a notice of entry on the door to the rental unit 24 hours prior. The Property manager also testified to that effect. The specific incident to which the Tenant was referring to was in November 2021 when the Tenant, unbeknownst to him, was away. The Landlord testified that he had received an unusually large water utility bill and when he went downstairs to ask the Tenant about it, he could hear water running but got no reply to his knocking. On November 21, 2021 after trying to call the Tenant and knocking on the door to no avail he placed a notice of intent to enter on November 22, 2021 on the door. This was substantiated by a picture of the notice entered in evidence. Subsequently the Landlord testified to entering the rental unit on November 22, 2021 in accordance with the notice and discovering that the Tenant had left the taps fully open and running.
28. The Landlord and the property Manager both testified that at no time did he or anyone else acting on his behalf misrepresent themselves to gain entry. Any realtors that visited were escorted by the Landlord's realtor or the property manager and those visits were always preceded by the appropriate notice
29. The Landlord acknowledged responsibility for the towing of the security camera installer's truck, but it was his position that the truck was parked in front of the garage and preventing him from leaving. When asked if he attempted to discover who had authorized the truck to be there or to investigate further his response was that he had waited over two hours before calling the towing company and that he didn't engage the Tenant on the issue as their relationship was already strained.
30. As to the "frivolous lawsuits" it was the Landlords position that those matters were merely him exercising his legal rights as it was the Tenant's habit to defame him both publicly and professionally, including filing a false complaint with the Ontario College of Physicians alleging he was operating a medical practice out of his house.

*Analysis*

31. Sections 22, 25, and 27 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.
- 25** A landlord may enter a rental unit only in accordance with section 26 or 27.
- 27** that a landlord has a right to enter a rental unit in order to carry out an inspection or perform repairs if the landlord has first given a tenant a written notice of entry at least 24 hours in advance specifying the reason for entry, the day of entry and a

time of entry between the hours of 8 a.m. and 8 p.m. If the landlord complies with these requirements the tenant cannot deny entry to the landlord or the landlord's agents.

32. Having given consideration to the evidence presented here, and for the following reasons, I am not satisfied that the Tenant has proven the allegations on the balance of probabilities.
33. Firstly, regarding the alleged harassment surrounding the rent increase, at no time did the Tenant offer any evidence to support their claims. Likewise, the Tenant failed to provide anything to substantiate the alleged incident in August 2021. Accordingly, given the Landlord's testimony denying that either incident ever happened, I cannot find in favour of the Tenant.
34. As to the alleged illegal entries, the Tenant failed to provide any testimony or evidence pertaining to the second alleged incident other than to claim it happened. As to the entry in November 2021, I accept the Landlord's version of events as substantiated by the evidence he submitted, namely the notice of entry. Accordingly, again I do not find the Tenant has proven their case in this regard.
35. Regarding the allegation that the Landlord damaged his car, the Tenant failed to provide anything to substantiate the claim. Accordingly, I am not satisfied he has proven his case.
36. As to the allegation that the Landlord had the security cameras installation truck towed, the Landlord didn't dispute the allegation, however, in the absence of any supporting evidence from the Tenant, I am accepting of the Landlord's explanation that this wasn't intended to be malicious, but he did so due to the truck blocking the garage and preventing him from leaving, and only did so after waiting for over an hour. Accordingly, I am not satisfied that this constituted substantial interference.
37. The remaining allegations of substantial interference arise from the allegation that the Landlord failed to meet their maintenance obligations in accordance with s. 20(1) of the Act. Given the determination above I am satisfied on the balance of probabilities that there was no substantial interference on part of the Landlord or their agents. Accordingly for this reason and those above I must dismiss the Tenants' applications.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated as of May 15, 2022, the date the Tenant moved out of the rental unit
2. The Tenant shall pay to the Landlord \$15,802.76. 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 Tenant. See Schedule 1 for the calculation of the amount owing.

- 3. If the Tenant does not pay the Landlord the full amount owing on or before April 25, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 26, 2023 at 6.00% annually on the balance outstanding.
- 4. The T2 and T6 Applications are dismissed.

**April 14, 2023**

**Date Issued**

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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 Tenant must pay as the tenancy is terminated**

Rent Owing To Move Out Date	\$17,620.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$1,900.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$103.24
<b>Less</b> the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$15, 802.76</b>

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