



AUG 23 2023

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

Citation: De Greens Family Holdings Corp v Browning, 2023 ONLTB 57366

Date: 2023-08-23

File Number: LTB-L-078826-22

In the matter of: Main (Lower), 145 Ainslie Street
Cambridge Ontario N1R3P4

Between: De Greens Family Holdings Corp Landlord

And

Evan Browning and Matthew Barrett Tenant

De Greens Family Holdings Corp (the 'Landlord') applied for an order to terminate the tenancy and evict Evan Browning and Matthew Barrett (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on December 19, 2022 and May 1, 2023.

The Landlord's Agents, Ken Green and Marie Green, attended the hearing.

A Tenant's legal representative, Barrett Beaudoin, attended the hearing representing the Tenant Evan Browning.

A Tenant's legal representative, Sean Harvey, attended the hearing representing the Tenant Matthew Barrett.

The Tenant Matthew Barrett also attended the hearing.

Determinations:

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. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The Tenant has paid \$1,500.00 into the LTB since the application was filed.
4. The Landlord is seeking a standard order for eviction and arrears.

Section 83 Relief From Eviction: Landlord in Serious Breach

5. The position of the MB is that the Landlord is in serious breach of the tenancy or of a material covenant under the tenancy pursuant to the Act.
6. To support his claim, the Tenant testified that that Landlord on or about November 11, 2022, removed the full size stove and the full sized fridge from the rental unit, and replaced the full size stove with a single hot plate, and replaced the full size fridge with a small “counter top size” fridge.
7. MB was participating in the hearing by mobile phone, and provided the Board with a live feed of the rental unit on the day of the hearing. MB’s live video showed two large vacant spaces in the kitchen where the stove and the fridge were before the Landlord removed them.
8. MB then provided live video of the hot plate, which measured approximately 10 inches wide, and the fridge that measured approximately 2 feet by 2 feet, that was positioned on the counter top.
9. KG testified he removed the stove and fridge and replaced them with more energy efficient appliances to cut down on the utilities the Landlord was incurring.

The Act and Analysis

10. Section 83(3)(a) of the Act states:

Circumstances where refusal required

(3) Without restricting the generality of subsection (1), the Board shall refuse to grant the application where satisfied that,

(a) the landlord is in serious breach of the landlord’s responsibilities under this Act or of any material covenant in the tenancy agreement;

11. The word “serious” is not defined in subsection 83(3) or in any other part of the Act. The Board has held in the past that the word “serious” in section 83 of the Act should be interpreted to mean substantial and ongoing and not merely minor, trivial or of passing concern.
12. Further, the wording in s. 83(3)(a) is in the present tense, meaning that the serious breach must be ongoing at the time of the hearing before the Board.

13. I find the live video evidence provided by the Tenant the day of the hearing substantiates his claims the Landlord is in serious breach.
14. I do not find KG's testimony credible with respect to his reasoning to remove the large appliances and replaced them with smaller ones that in his words were "more efficient", in order to reduce electricity costs. The items the Landlord provided the Tenant after removing the large appliances, in my view, are such that the Tenant is extremely limited in his ability to cook meals. I make note the fridge was so small it may only hold enough food for one day. Further the hot plate alone, leaves the Tenant with no ability to heat multiple items at the same time, and the Tenant is left without the use of any oven portion.
15. Based on the evidence before me I find the Landlord's action of removing the stove and fridge from the Tenant's rental unit and replacing them with inadequate substitutions, in my view, is serious enough to be deemed a serious breach of a covenant or responsibility under the Act. Subsection 83(3)(a) of the Act provides that the Board shall refuse to grant an eviction application where the Board is satisfied that the landlord is in serious breach of an obligation under the Act or in the tenancy agreement.
16. Given my finding the Landlord is in serious breach in accordance with 83(3)(a) of the Act the Landlord's application must be dismissed.
17. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
18. This order contains all reasons for the determinations and order made. No further reasons will be issued.

It is ordered that:

1. The Landlord's application is dismissed.
2. The Tenant's payment of \$1,500.00 into the Board shall be released back to the Tenant.

August 23, 2023
Date Issued



Greg Brocanier
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.