



Order under Section 69 Residential Tenancies Act, 2006

Citation: Multani v Pyatt, 2024 ONLTB 3060

Date: 2024-01-11

File Number: LTB-L-049568-23

In the matter of: 79 SCOTT ST
ST THOMAS ON N5P1L1

Between: Paramjit Multani Landlord

And

Natasha Pyatt, Tenants
Cameron Erskine,
Jayde Norrish
Faith Beckon

Paramjit Multani (the 'Landlord') applied for an order to terminate the tenancy and evict Natasha Pyatt, Cameron Erskine, Jayde Norrish and Faith Beckon (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on December 20, 2023.

The Landlord's Legal Representative Susana Pereira and the Tenants Natasha Pyatt, Jayde Norrish and Faith Beckon attended the hearing.

Determinations:

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants 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 Tenants were still in possession of the rental unit.
3. The lawful rent is \$2,500.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$82.19. This amount is calculated as follows: \$2,500.00 x 12, divided by 365 days.
5. The Tenants have paid \$6,000.00 to the Landlord since the application was filed.
6. The rent arrears owing to December 31, 2023 are \$14,000.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.

9. The Tenant Jayde Norrish (JN) testified that she no longer resides at the rental unit since January 28, 2023. She did not inform the Landlord in writing or sign any forms. There are maintenance issues at the rental unit due to which she had to move out. The other Tenant Faith Beckon (FB) testified that she also moved out at the end of January 2023 due to maintenance issues. She did not give any written notice as the Landlord would not receive her text messages due to a phone issue. She called the Landlord twice, but he did not answer.
10. The Tenants also went to the Property Manager's office but since he was not available, they left a message with his assistant that they are vacating. Faith Beckon who represented Cameron Erskine (CE) testified that he vacated the unit in May 2023. He also did not inform the Landlord but only told the fourth Tenant Natasha Pyatt (NP) who is still in possession of the rental unit.
11. The tenancy began on August 1, 2022 with all four Tenants signing the lease on July 21, 2022 with the Landlord as joint tenants.
12. The Landlord's position was that all four Tenants are responsible for the arrears as this is a joint tenancy and the Tenants entered into the lease agreement jointly. The lease agreement signed by the parties was submitted as evidence.
13. As noted in Board's Interpretation Guideline 21: Landlords, Tenants, Occupants and Residential Tenancies:

Where two or more persons are tenants of a rental unit, it is important to consider the nature of their relationship with the landlord to determine if the tenants are joint tenants, tenants in common, or, as in the case of a rooming house, they have separate and distinct tenancy agreements with the landlord and live separately from one another.

In a joint tenancy, there is a single tenancy agreement, and the tenants are jointly and severally (individually) liable for the payment of the entire rent for the rental unit.

14. I find that it is more likely than not that the intention of all parties was to create a joint tenancy. It is undisputed that all four Tenants took possession under the same tenancy agreement. It also appears that they each had possession of the undivided whole of the premises based on NP's testimony with each Tenant having their own bedroom.
15. In a joint tenancy all tenants are jointly and severally liable to pay rent and if one of the tenants fails to pay rent, the other tenants are equally responsible for that payment. This is true even if the tenants have an agreement amongst themselves about how rent payments are to be divided.
16. JN and FB requested that their names be removed from the application along with CE's because they have been paying rent somewhere else. The Landlord filed this application as against all four Tenants and did not request to remove JN, FB and CE from this application. Section.87(1)(b) gives the Board authority to issue orders against former tenants if the Landlord files their application within one-year of the former tenant vacating the rental unit and the tenant vacated the rental unit on or after September 1, 2021. Here

the Tenants did give up possession of the rental unit but without terminating the tenancy. As such, the rent arrears remain as against all four tenants.

17. NP testified that there are many maintenance issues at the rental unit. The Tenant wanted to raise maintenance issues at the hearing, but no disclosure of the issues or evidence was made at least seven days before the hearing as per section 82(2) of the Act and LTB Rule of Procedure 19(4), and no reasonable explanation was provided for why the Tenant could not have met this requirement. Therefore, I denied his request. She was advised to bring his own application before the Board if he chooses so.

Section 83 considerations

18. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it is mandatory to deny eviction based on 83(3)(a) of the Act. I am prepared to grant the Tenants a payment plan to pay off their rent arrears, with interest being the consequence of a breach.
19. I find that the Landlord is in serious breach of the Landlord's responsibilities under the Act. more specifically, the Landlord has failed to provide the Tenants with reasonable access to a shower/bath. Therefore, I must refuse to grant eviction pursuant to section 83(3)(a) of the Act which states".

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;...

No access to a shower/bath

20. NP testified that the house has two washrooms – one full washroom and one powder room. The only washroom with a tub and a shower leaks badly onto the dining room below. The dining room ceiling is sagging due to this. The Landlord was made aware of the same in November 2022, but he only attempted to fix it. The problem stands as is today. The Tenant testified that she and her children shower at the neighbour's house and pay them \$100.00 each month to cover their additional costs.
21. The other two tenants also testified that they moved out of the house due to the shower leaking and other maintenance issues.
22. The Landlord's Legal Representative was not equipped with any details related to the issue since it was raised at the hearing. The Landlord was not in attendance.

Analysis

23. The use of the word "serious" in subsection 83(3)(a) establishes that not all breaches of the Landlord's responsibilities can be considered; only those determined by the Member to be serious will invoke section 83(3) of the Act. Further, subsection 83(3)(a) of the Act speaks in the present tense, thus I cannot consider past breaches that have been remedied.

24. With respect to the shower issue, the Tenant's viva-voce evidence establishes that the issue is ongoing, and she told the Landlord around November 2022 that the shower is leaking. The other tenants also testified to the issue being there when they vacated in January 2023. There was no evidence led about how many times or how the Tenant communicated with the Landlord about the issue or the nature of the Landlord's response. The Tenant did testify that the Landlord has attempted to fix the issue, but the issue persists till the date of hearing.
25. The Tenant has continued to live at the rental unit since November 2022 till the date of hearing even though she states that there is no shower in the house, and she showers at the neighbour's house for an additional cost.
26. This tenancy is clearly marked by miscommunication and the Tenants have not justified their lack of communication with the Landlord except that they do not understand him. However, the specific issue I must address here is whether the Landlord's failure to address shower issue constitutes a serious breach of their maintenance obligations as set out in section 20(1) of the Act.
27. The Landlord may be in breach of section 20(1) of the Act concerning the maintenance obligations. The Landlord has not been able to rectify the shower issue till date.
28. The next question I must examine is whether this behaviour constitutes a serious breach of the Act that results in a mandatory refusal of termination pursuant to section 83(3)(a) of the Act.
29. The Act does not define the term "serious". However, in choosing to use the word "serious", the legislature could not have intended every breach of the Act to result in mandatory refusal of eviction. The conduct must be sufficiently egregious to result in a denial of the Landlord's right to access the eviction process.
30. Black's Law Dictionary defines "serious" as "important, weight, momentous, grave and great." Board Order TSL-24120-12 2012 Canlii 21575 (ON LTB) issued on February 16, 2012 set out that the word "serious", in the context of s. 83, meant substantial and ongoing and not merely minor, trivial or of passing concern."
31. I do find that the Landlord is in serious breach of his obligations by not providing the Tenant with access to a shower since November 2022. Having a working shower is essential for all tenants. The Landlord shall have treated the shower issue as a high priority given its importance.
32. The portion of the Landlord's application seeking an order for rent arrears is granted based on the Landlord's evidence, including the L1/L9 update form. I am also granting the Tenant a payment plan as requested.

Rent payment plan

33. The Tenant NP also testified that she has been paying the Landlord \$1,000.00 each month as per her deal with the rest of the Tenants. She was not aware that she was liable for entire rent. She added that she makes almost \$4,515.00 each month in Ontario Works and Child Tax. If she rents out a room, she can make additional money and will be able to

afford to pay the Landlord \$1,100.00 extra each month towards rent arrears. She also testified that she has been looking for other rental units but has not found any suitable and affordable rental units.

It is ordered that:

1. The Tenants shall pay to the Landlord \$14,186.00 which represents the amount of rent owing up to December 31, 2023 and costs.
2. The Tenants shall pay to the Landlord the amount set out in paragraph 1 in accordance with the following schedule:

a) On or before January 20, 2024	\$1,100.00
b) On or before February 20, 2024	\$1,100.00
c) On or before March 20, 2024	\$1,100.00
d) On or before April 20, 2024	\$1,100.00
e) On or before May 20, 2024	\$1,100.00
f) On or before June 20, 2024	\$1,100.00
g) On or before July 20, 2024	\$1,100.00
h) On or before August 20, 2024	\$1,100.00
i) On or before September 20, 2024	\$1,100.00
j) On or before October 20, 2024	\$1,100.00
k) On or before November 20, 2024	\$1,100.00
l) On or before December 20, 2024	\$1,100.00
m) On or before January 20, 2025	\$986.00

3. If the Tenants fail to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenants to the Landlord pursuant to paragraph 1 of this order shall become immediately due and owing and the Tenants will then start to owe interest. This will be simple interest calculated from date of breach at 7.00% annually on the balance outstanding.

January 11, 2024

Date Issued

Sheena Brar

Member, Landlord and Tenants Board

15 Grosvenor Street, 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.