



Order under Section 69/89 Residential Tenancies Act, 2006

Citation: Sohi v Singh, 2024 ONLTB 10854

Date: 2024-02-12

File Number: LTB-L-058521-23

In the matter of: 62 UPPER HUMBER DR
ETOBICOKE ON M9W7B6

Between: Gurmail Singh Sohi Landlords
Rajvinder Sohi

And

Randeep Singh Tenants Gagandeep Singh

Gurmail Singh Sohi and Rajvinder Sohi (the 'Landlords') applied for an order to terminate the tenancy and evict Randeep Singh, Lilas Salaheddin Almardini, Gagandeep Singh and Navpreet Singh (the 'Tenants') because:

- the Tenants did not pay the rent that the Tenants owe (L1 application).
- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant; the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully or negligently caused damage to the premises; the Tenants, another occupant of the rental unit or a person the Tenants permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex and because the Tenants have been persistently late in paying the Tenant's rent (L2 application).

The Landlords also applied for an order requiring the Tenants to pay the Landlord's reasonable out-of-pocket costs the Landlords have incurred or will incur to repair or replace undue damage to property.

This application was heard by videoconference on January 22, 2024. The Landlords, the Landlord's legal representative Kuldip Singh and the Tenant Randeep Singh attended the hearing.

Preliminary:

Named parties:

1. As explained below, the application is amended to remove Lilas Salaheddin Almardini and Navpreet Singh as Tenants and/or respondents to the application.
2. The Tenant present at the hearing testified that Navpreet Singh vacated the rental unit in 2019 and that Lilas Salaheddin Almardini vacated the rental unit on or about January 2021.
3. The Landlords confirmed that these two Tenants have not been seen residing in the rental unit since 2021, but argued that they were listed on the original lease agreement signed between the parties and that no written notice was provided to confirm that they have vacated the rental unit.
4. The Landlord's applications were filed on July 26, 2023.
5. Effective September 1, 2021, the Board has jurisdiction to consider applications against former tenants for arrears of rent and compensation, but only if the former tenant vacated the unit on or after September 1, 2021, which is the date subsection 18 (1) of Schedule 4 to the *Protecting Tenants and Strengthening Community Housing Act, 2020* came into force.
6. In *1162994 Ontario Inc. v. Bakker, 2004 CanLII 59995 (ON CA)*, the Ontario Court of Appeal determined that "possession of a rental unit refers to some form of control over that unit as demonstrated by factors such as access to, use of, or occupation of the unit."
7. Based on the evidence before me, I find that both Lilas Salaheddin Almardini and Navpreet Singh vacated and ceased to be in possession of the unit prior to September 1, 2021. The Tenant present at the hearing has direct knowledge of the individuals residing with him in the rental unit and the Landlords provided insufficient evidence to support that the two individuals in question were continuing to reside in the rental unit on or after September 1, 2021.

Monetary jurisdiction:

8. Both applications filed by the Landlords claim compensation that exceeds the Board's monetary jurisdiction of \$35,000.00.
9. Section 207(1) of the *Residential Tenancies Act, 2006* states that the Board cannot order a party to pay more than \$35,000.00 in arrears and/or compensation. Although the Landlords in this case have filed two different applications, they were ultimately filed

together and as such make up one order and file number. Therefore, I find that the Board can order the Tenants to pay \$35,000.00 for both applications and under this order.

10. The Landlord's legal representative understood that in accordance with section 207(3) of the Act by pursuing this application before the Board, the Landlord cannot claim any amounts in excess of \$35,000,00 in a new application or before a Court of competent jurisdiction.

L1 application:

11. The Landlords served the Tenants with a valid Notice to End Tenancy Early for Nonpayment 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.
12. As of the hearing date, the Tenants were still in possession of the rental unit.
13. The lawful rent is \$3,000.00. It is due on the 1st day of each month.
14. Based on the Monthly rent, the daily rent/compensation is \$98.63. This amount is calculated as follows: \$3,000.00 x 12, divided by 365 days.
15. The Tenants have not made any payments since the application was filed.
16. The rent arrears owing to January 31, 2024 are \$43,000.00.
17. The Landlords incurred costs of \$186.00 for filing the application and are entitled to reimbursement of those costs.
18. The Landlords collected a rent deposit of \$2,400.00 from the Tenants and this deposit is still being held by the Landlords. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
19. Interest on the rent deposit, in the amount of \$240.99 is owing to the Tenants for the period from November 5, 2017 to January 22, 2024.
20. The Tenant present at the hearing disputed owing arrears for the period of January 1, 2022 to May 31, 2023 as plead on the Landlord's N4 notice and L1 application. The Tenant argued that rent for each of these months were paid in full in cash. The Landlords disputed receiving full payment for this period and the Tenant provided no receipts, bank records or written confirmation from the Landlords to confirm that these alleged funds were paid.
21. In *Mauti v. Gibbs, 2019 ONSC 3355 (CanLII)*, the Divisional Court held at paragraph 27 that while the Landlord bears the burden of proof in a rent arrears application, it is difficult for a landlord to prove a negative (i.e. non-payment of rent). Therefore, ". . .while the ultimate persuasive burden never shifts, once a landlord denies receiving funds, the tenant will have an evidentiary burden or a chance to advance some evidence to positively prove that he or she paid rent."

22. Based on the evidence before the Board, I find that the arrears claimed on the N4 notice and L1 application to be accurate and correct. As stated above, the Tenants provided insufficient evidence to support that the rent was paid in full for the period of January 1, 2022 to May 31, 2023.
23. The Tenant did not dispute paying no rent from June 1, 2023 and stated that the rent was withheld due to the Landlords harassing the Tenants, illegally entering the rental unit and failing to maintain the rental unit. The Tenants are not permitted under the Act to withhold their rent.
24. Although section 82 (1) of the Act provides that a tenant may on an application for arrears of rent raise any issue that could be the subject of an application made by the tenant under the Act, Section 82(2) of the Act and Rule 19.4 of the Board's Rules of Procedure requires a tenant to disclose their evidence to the Board and the landlord in advance of the hearing, along with a list of all issues to be raised.
25. As of the hearing date, the Tenants failed to comply with the notice / disclosure requirements of section 82(2) and Rule 19.4. As of the date of the hearing, the Tenants had not filed with the Board or served on the Landlord a list of issues to be raised or any evidence to support their section 82 concerns. The Tenant was unable to provide any explanation as to why he did not comply with Rule 19.4 of the Act.
26. Therefore, the Tenants are not entitled to raise section 82 claims on this application and the application proceeded to hear the Landlord's claim for non-payment of rent only.

L2 application:

27. The Landlord's L2 application is based on a N5, N7 and N8 notice of termination. The N5 and N7 notice contain the same pleadings and/or alleged conduct.

N8 notice:

28. On June 20, 2023, the Landlords served the Tenants with a N8 notice of termination asserting that the Tenants have been persistently late in paying the rent.
29. The N8 notice alleges that the Tenants have failed to pay the lawful rent in full and on time for the period of January 2022 to June 2023. Since the N8 notice was served, the Tenants have paid no rent for the period of July 2023 to January 2024.
30. The Tenant did not dispute the Landlord's claim for persistent late payment of rent.

N5 & N7 notice:

31. The Landlord's N5 and N7 notices of termination were served to the Tenants on June 20, 2023. The N5 notice alleges substantial interference with the Landlord's reasonable enjoyment, lawful right, privileges and/or interest of the residential complex and that the Tenants have wilfully and/or negligently caused undue damages to the rental unit and/or

residential complex. The N7 notice alleges that the Tenants have seriously impaired the safety of another person within the residential complex.

32. On June 7, 2023 the Landlords entered the rental unit and observed extensive damages to the rental unit. The damages included the following:

- Damaged garage door and frame
- Missing and/or removed smoke detectors
- Broken kitchen and bathroom cabinet doors
- Broken interior door handles and locks
- Holes in drywall
- Damaged kitchen floor and basement ceiling due to a water damage

33. The Landlords submitted into evidence photographs of the rental unit taken during the inspection (LL exhibit #1) and an estimate from a contractor confirming that the rental unit requires approximately \$119,107.65 to repair and/or replace the damaged property (LL exhibit #2). The estimate states that the kitchen cabinets and floors throughout the home cannot be repaired and suggests removing the flooring on all three floors of the home. The estimate also suggests that extensive plumbing repairs should be conducted to address any water leaks and that the walls require patching and that the garage door requires replacement and repairs to the framing around the garage door.

34. The Tenant did not dispute the damages to the garage door stating that one of the residents of the rental unit accidentally drove into it with their truck and did not dispute the damages to the kitchen and bathroom cabinets. The Tenant present at the hearing stated that these damages were caused by the other Tenants and/or occupants back in 2020 and that these individuals no longer reside in the rental unit.

35. The Tenant did however dispute the costs of repair and argued that he repaired all of the alleged items himself in 2020, with the exception of the garage door. The Tenant also disputed being responsible for any water leaks in the rental unit and argued that these were maintenance issues caused by reasonable wear and tear and stated that the Landlord neglected to address these issues in a timely manner.

36. The Tenant also did not dispute removing the smoke detectors on the main floor of the rental unit and stated that this was because each time he cooked, the smoke detectors would sound.

Analysis:

37. Based on the evidence before the Board, I am satisfied that the Tenants have persistently failed to pay the rent late, that the Tenants have seriously impaired the safety of another person within the rental unit and have wilfully and/or negligently damaged the rental unit.

38. As stated above and in my determinations on the L1 application, I find that the Tenants have not paid the full rent they were required to pay for the period set out on the N8 notice and that since the notices were served, the Tenants have failed to make any payments for

the months of June 2023 to January 2024. I therefore find that the Tenant's have failed to pay the lawful rent in full and on time.

39. The Tenant also did not dispute that he and the other named tenant disconnect the smoke detector on the main floor when cooking. Although, the Tenant provided a reason for doing so, I do not find the reason to be acceptable. If the Tenants had concerns with the smoke detector, they should have reported the concern to the Landlord and/or contacted Bylaw enforcement to have the issue addressed. By disconnecting the smoke detectors, I find that the Tenants have seriously impaired their own safety in the rental unit. In *Furr v. Courtland Mews Cooperative Housing Inc.*, 2020 ONSC 1175 (CanLII) the Divisional Court confirmed that serious impairment of safety includes both actual impairment and a real risk of impairment.
40. With respect to the Landlord's N5 notice alleging wilful and/or negligent damages, the Tenant did not dispute that the garage door was damaged by the Tenants, their occupants and/or permitted guests. The Landlords also submitted into evidence photographs confirming that the flooring, walls, doors and kitchen and bathroom cabinets were damaged and required repairs. Although the Tenant argued that he repaired most of the damages himself in 2020, the Tenant provided insufficient evidence to support his position. The Tenant provided no photographs or invoices and/or receipts to confirm that any damages caused by the Tenants were repaired by themselves.
41. I also find that the Landlords will incur costs to repair and/or replace the damage property and that the Tenants failed to void the N5 notice of termination by paying to the Landlords the estimated costs of repairs on or before June 27, 2023, which was seven days after the N5 notice was served. The Tenant's own testimony confirms that the Tenants made no payments to the Landlords for the damages and costs claimed.

Relief from eviction:

42. 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 would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
43. At the hearing the Tenant did not propose an alternative to eviction, but requested that eviction be postponed until April 30, 2024 to allow the Tenants additional time to secure alternate housing. The Tenant testified that his brother and joint-tenant suffers from schizophrenia and is currently under care.
44. The arrears of rent and costs of damages are substantial and already exceed the Board's monetary jurisdiction of \$35,000.00. The Landlords are a non-corporate entity who rely on the rental income to pay the mortgage, taxes and expenses on the rental unit. Further, the Tenants have made no good-faith payments to the Landlords for the past 8 months and expressed at the hearing that they have no interest in making any future payments to the Landlords.

45. I find that any further delay in terminating the tenancy would severely prejudice the Landlords who have already lost a substantial amount of arrears and compensation owing due to the amounts exceeding the Board's monetary jurisdiction.
46. As I am satisfied with the grounds for termination on both the L1 and L2 application, the termination date will be non-remedial.

It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated. The Tenants must move out of the rental unit on or before February 23, 2024.
2. If the unit is not vacated on or before February 23, 2024, then starting February 24, 2024, the Landlords 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 Landlords on or after February 24, 2024.
4. The Tenants shall pay the Landlords \$35,000.00. This amount includes rent arrears owing up to the date of the hearing and the costs of repairing and/or replacing the damaged property, less the rent deposit and interest the Landlord owes on the rent deposit and the amount in excess of the Board's monetary jurisdiction.
5. The Tenants shall also pay to the Landlords \$186.00 for the costs of filing the application.
6. If the Tenants do not pay the Landlords the full amount owing on or before February 23, 2024, the Tenants will start to owe interest. This will be simple interest calculated from February 24, 2024 at 7.00% annually on the balance outstanding.

February 12, 2024

Date Issued

Fabio Quattrociochi

Member, Landlord and Tenant 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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on August 24, 2024 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.

