



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

Citation: Simpson v Lemmon, 2024 ONLTB 5446

Date: 2024-01-19

File Number: LTB-L-025170-23

In the matter of: 257 Main St
Odessa ON K0H2H0

Between: Laura Simpson and David Robinson Landlords

And

Amy Lemmon Tenant

Laura Simpson and David Robinson (the 'Landlords') applied for an order to terminate the tenancy and evict Amy Lemmon (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes ('L1 Application').

The Landlords 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 has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlords or another tenant;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex used the rental unit or the residential complex in a manner that is inconsistent with use as a residential premises and that has caused or can be expected to cause significant damage;
- the Landlords require possession of the rental unit in order to demolish the unit ('L2 Application').

The L2 Application was resolved by order LTB-L-025170-23-IN, issued August 4, 2023.

The L1 Application was heard by videoconference on December 12, 2023.

The Landlords' legal representative, Shasta Pearson ('SP'), and the Tenant attended the hearing of the L1 Application.

Determinations:

1. The Landlords 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 October 31, 2023. Rent arrears are calculated up to the date the Tenant vacated the unit.
4. The lawful rent is \$850.00. It was due on the 1st day of each month.
5. SP said that the rent arrears owing to October 31, 2023 are \$3,400.00. This is because the last month's rent deposit was applied to the rent for October 2023 pursuant to order LTB-L-025170-23-IN, issued August 4, 2023 with respect to the L2 Application. This left five months of rent unpaid, but one of those months was waived as compensation with respect to an N13 notice of termination of tenancy. According to SP, this leaves 4 months of rent unpaid and owing: $4 * 850.00 = \$3,400.00$.
6. It was not disputed that the Tenant did not pay the Landlord money for rent for the months of June, July, August, and September 2022. The Tenant's position was that she only owes rent arrears for one month, because she said there was an agreement that she would not be required to pay rent from June to August 2022, inclusive.
7. SP said that she made an offer to the Tenant on behalf of the Landlords after they purchased the residential complex. The substance of the offer according to SP was that the Tenant would not have to pay rent to the end of August, the Landlords would not do any maintenance to the end of August, but that this was contingent on the Tenant vacating the rental unit at the end of August 2022.
8. The offer was made by email on June 6, 2022, and a copy of the email was submitted as evidence (DOC-2424631). The pertinent part of the email says "[s]ince the tenancy will end on August 31st, Laura and Dave have decided to waive all of the rent for the next two months in lieu of the repairs you asked the previous owner to complete. This means that there will be no amount owing for June, July, or August. I will provide you with a cheque for \$850.00 at the time of your move out". SP said the \$850 payment referred to was for a different notice of termination of tenancy that was ultimately not pursued.
9. SP said that in late August 2022 it became apparent that the Tenant was not going to vacate, and was requesting maintenance to be done. She said that effectively since the Tenant decided not to move out, she did not accept this offer and the rent was owing.
10. The Tenant said that her understanding was that the rent was not due for the June to August 2022 as compensation for outstanding maintenance issues.
11. The LTB is mandated to ascertain the real substances of all transactions and activities relating to a residential complex or rental unit and the good faith of the participants, and in doing so may disregard the outward form or a transaction and may have regard to the pattern of activities relating to the residential complex or rental unit: *Residential Tenancies Act, 2006*, ss. 202(1).
12. The real substance of this transaction was that the Landlords made an offer to the Tenant to waive the rent due for June and July in exchange for not having to do any maintenance, because the Landlords believed the tenancy was ending and the Tenant would vacate by August 31, 2022. This is supported by the wording in the email, which says that the rent would be waived for June and July "in lieu of the repairs you had asked the previous owner to complete", and this this means that nothing would be owing for June, July, or August.

The obvious implication is that the rent deposit would be applied to August, which is why there would not be rent owing for August even though the rent for August was not being waived.

13. For an agreement to be binding there must be a meeting of the minds, in that the parties must agree on the essential terms of what is being agreed to. The Tenant may have believed that the rent was being waived for three months, from June to August 2022 as compensation for maintenance issues, but it is plain that this is not what the Landlord actually offered, and I accept this is not what the Landlords agreed to.
14. The rent arrears owing to October 31, 2023 are therefore \$3,400.00 because rent was not paid for the months of June to September 2022 inclusive.
15. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
16. The Tenant originally intended to raise issues under section 82 of the Act in response to this application about rent arrears, but instead decided to pursue these issues on a tenant application she has filed.

It is ordered that:

1. The tenancy between the Landlords and the Tenant is terminated as of October 31, 2023, the date the Tenant moved out of the rental unit.
2. The Tenant shall pay to the Landlords 3,586.00 for rent arrears owing to October 31, 2023 and the Landlord's cost of filing this application.
3. If the Tenant does not pay the Landlords the full amount owing on or before January 30, 2024, the Tenant will start to owe interest. This will be simple interest calculated from January 31, 2024 at 7.00% annually on the balance outstanding.

January 19, 2024

Date Issued

Mark Melchers

Member, Landlord and Tenant Board

15 Grosvenor St, Ground Floor
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.