



Order under Section 69 Residential Tenancies Act, 2006

Citation: Starlight Canadian Residential Growth Fund v Huq, 2024 ONLTB 4020

Date: 2024-01-11

File Number: LTB-L-024048-22

In the matter of: 1003, 50 BURNHILL RD
SCARBOROUGH ON M1L4R3

Between: Starlight Canadian Residential Growth Fund Landlord

And

Bashira Huq and Mushfique Wadud Tenant

Starlight Canadian Residential Growth Fund (the 'Landlord') applied for an order to terminate the tenancy and evict Bashira Huq and Mushfique Wadud (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 4, 2024.

The Landlord's Legal Representative, M. Anderson and the Tenant, M. Wadud attended the hearing.

S. Fitzgerald attended as a witness on behalf of the landlord.

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 lawful rent is \$1,836.01. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$60.36. This amount is calculated as follows: $\$1,836.01 \times 12$, divided by 365 days.
5. The Tenant has paid \$11,061.82 to the Landlord since the application was filed.
6. The rent arrears owing to January 31, 2024 are \$28,331.09.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Section 82 issues

8. The Tenant raised 5 issues at the hearing with respect to Section 82 of the *Residential Tenancies Act, 2006*, each issue is discussed below.

Bed Bugs/Substantial Interference due to prepping unit for treatment

9. The Tenant testified that he notified the Landlord on January 15, 2022 about the presence of bedbugs in the unit. The Tenant testified that the Landlord responded to his request in a short period of time and the unit was treated. The Tenant testified that about a month later, the issue returned, and he contacted the Landlord. Again, the Landlord treated the unit within a short time. The Tenant testified that the bed bug issue would be rectified with treatment, but usually a short time later, they would return. The Tenant testified that he just stopped contacting the Landlord regarding this issue and attempted to treat the unit himself.
10. The Tenant testified that the reason he stopped advising the Landlord was partly because prepping the unit was a big inconvenience. He testified that each time he would report bedbugs, he would have to prep the unit for the initial treatment, then again approximately 2 weeks later for the follow up treatment. He also had a 3-year-old at the time and would have to be out of the unit for a full day. The Tenant testified that the bed bug issue continues to this day and it is his belief that the unit had bedbugs before he moved in.
11. The Landlord's witness testified that each time they were notified of the pest issue, they would schedule the appropriate treatment in a timely manner. The Landlord submitted into evidence the reports from the pest control company. The unit was treated for bedbugs on numerous occasions, and in every report submitted, the technician notes that there was no live activity observed at the time of treatment.
12. The Landlord's witness testified that there were occasions where the unit was not prepped properly for treatment. She testified that in October 2022, while a block treatment was being preformed, the Tenant's unit was not treated as the Tenant advised the Landlord that the household was sick. On November 29, 2022, the Tenant was not prepared for treatment and pictures were submitted to show the condition of the unit.
13. After November 29, 2022, the Landlord did not hear from the Tenant regarding bedbugs.

Flooring in the bedroom

14. The Tenant testified that he notified the Landlord about lifting tiles in the bedroom in November 2021. He testified that the Landlord attended right away to inspect. He testified that the Landlord advised that because the flooring was damp, they would have to wait a bit to use the glue to fix the tiles. In February 2022, the tiles were glued down. When they started to lift again, the Tenant testified that he did not notify the Landlord again because he said they would just do a "patch fix". The Tenant testified that this issue is still ongoing.
15. The Landlord testified that once they were notified about the tiles in November 2021, they inspected. The tiles were glued down in February 2022. The Tenant advised them again in March 2022 that the tiles were lifting, and the Landlord hired a contractor to deal with the issue. This was completed as of May 2022. The Landlord testified that they have not heard from the Tenant regarding the tiles in the bedroom since that time.

Balcony door/window

16. The Tenant testified that the window and balcony door do not have a proper seal and because of this, they make a rattling noise. He testified that the Landlord attended the unit once they were notified and tapped the window and door and told the Tenant not to use them. The Tenant continues to use them and seals them himself afterwards.
17. The Landlord does not contest this portion of the Tenant's testimony and undertakes to inspect and repair if warranted.

Car break in

18. The Tenant testified that on 2 occasions in the summer of 2022, his car, which is parked in the underground parking, had a window broken. He testified that he advised the Landlord. He paid approximately \$500.00 to fix the window on his car. He testified that there is not sufficient security, and the Landlord should be responsible for the damage done to the car.
19. The Landlord testified that on June 4, 2022, they were notified by another Tenant that it appeared that several cars in the underground parking had been broken into. The Landlord viewed the security footage, and an unknown person is seen breaking into the lobby of the complex and proceeded to take the elevator down to the parking garage. The Landlord notified the affected Tenants and advised them to call the police and their insurance companies.
20. The Landlord testified on June 28, 2022; a similar incident happened. A tenant called the police to report a suspicious male on a bike looking at cars in the underground garage. The male entered the garage by waiting for a vehicle to drive through. Police investigated the incident and affected tenants were notified.

Analysis

Bed Bugs

21. Section 20 of the Act holds the landlord 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.
22. In *Onyskiw v. CJM Property Management*, 2016 ONCA 477 (CanLII), the Court of Appeal determined that a contextual approach should be adopted when considering a landlord's potential breach of subsection 20(1) of the Act and a breach will not be found if the landlord's response to a maintenance issue was reasonable in the circumstances.
23. Based on the evidence before me, I do not find that the Landlord is in breach of their maintenance obligations with respect to the bed bug issue. The Tenant's testimony supports that the Landlord acted reasonably when notified about the bedbugs. The tenant decided to stop informing the Landlord because he felt that the treatments were not helping and that prepping the unit was a burdensome task.

24. The Landlord's evidence supports the determination that the Landlord acted promptly and reasonably every time they were notified of bedbugs by the Tenants. Pest reports indicate that there was no live activity found in the unit upon treatment.
25. For the reasons above, the Tenant's claim regarding bedbugs is dismissed.

Flooring in the bedroom

26. Based on the evidence before me, I found that the Landlord acted reasonably when advised about the issue with the flooring. Both times they were notified about the issue, they acted promptly. It was the Tenant's evidence that after the last time the floor was fixed, he did not advise the Landlord that tiles popped out again. The Landlord cannot be said to be in breach of an issue they were not informed about and had no reason to believe was still an issue. Therefore, the Tenant's claim relating to flooring is dismissed.

Balcony door/window

27. The Landlord does not contest this issue; therefore, an order directing the Landlord to inspect and make repairs, if necessary, shall be issued.

Car break ins

28. Based on the evidence before me, I am not satisfied that the Landlords are liable to the Tenant for these incidents. Although the events that took place on those 2 occasions are unfortunate, both incidents involved some unknown person breaking into or sneaking into the underground garage. It cannot be said that this was caused by the Landlord by act or omission. This portion of the Tenant's claim is dismissed.
29. The Landlord collected a rent deposit of \$1,770.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
30. Interest on the rent deposit, in the amount of \$0.48 is owing to the Tenant for the period from January 1, 2024 to January 4, 2024.

Relief from eviction

31. The Tenant testified that he essentially withheld rent in light of the alleged maintenance issues. He lives in the unit with his partner and child and has lived in the unit since September 2021.
32. The Tenant proposed a payment plan that would see the arrears paid off in approximately 2 and a half years by paying a lump sum amount of \$10,000.00 and payments of approximately \$664.00 until the amount is paid in full.
33. The Landlord is requesting a standard order given the substantial amount owing by the Tenant.
34. Based on the Tenant's own testimony regarding his income versus his monthly expenses, he cannot afford the payment plan that he is suggesting. His monthly expenses including

the monthly rent exceed his monthly income by approximately \$1,400.00 every month. This doesn't include the payments towards the arrears. The Tenant testified that he would alter his monthly expenses, but in this case, he would have to make significant changes and I am not convinced that this is feasible. These arrears are substantial, and have been ongoing since approximately April 2022, 6 months into the tenancy. To subject the Landlord to a payment plan that is clearly not affordable to the Tenant would be prejudicial.

35. 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 not be unfair to postpone the eviction until February 11, 2024 pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$28,517.09. if the payment is made on or before January 31, 2024. See Schedule 1 for the calculation of the amount owing.

OR

 - \$30,353.10 if the payment is made on or before February 11, 2024. See Schedule 1 for the calculation of the amount owing.
3. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after February 11, 2024 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
4. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before February 11, 2024**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$25,152.04. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$60.36 per day for the use of the unit starting January 5, 2024 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlord the full amount owing on or before February 11, 2024, the Tenant will start to owe interest. This will be simple interest calculated from February 12, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before February 11, 2024, then starting February 12, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

9. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after February 12, 2024.

January 11, 2024

Date Issued

Emily Robb

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 12, 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.

Schedule 1
SUMMARY OF CALCULATIONS

A. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before January 31, 2024

Rent Owing To January 31, 2024	\$39,392.91
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$11,061.82
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$28,517.09

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before February 11, 2024

Rent Owing To February 29, 2024	\$41,228.92
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$11,061.82
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$30,353.10

C. Amount the Tenant must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$37,798.34
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$11,061.82
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$1,770.00
Less the amount of the interest on the last month's rent deposit	- \$0.48
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00

Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$25,152.04
Plus daily compensation owing for each day of occupation starting January 5, 2024	\$60.36 (per day)