



Order under Section 69 Residential Tenancies Act, 2006

Citation: Ottawa Preston Holdings Ltd. v Carlos Cansancao Guimaraes, 2024 ONLTB 40178

Date: 2024-06-06

File Number: LTB-L-060187-23

In the matter of: 12 LARCH ST
OTTAWA ON K1R6W5

Between: Ottawa Preston Holdings Ltd. Landlord

And

Carlos Cansancao Guimaraes Tenant

Ottawa Preston Holdings Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict SPC Gama (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on May 22, 2024.

The Landlord's Agent Kristina Graham, Landlord's Legal Representative Sheldon McRae, and the Tenant Carlos Cansancao Guimaraes 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, which is a single family home, occupied in whole by the Tenant.
3. The lawful rent is \$1,650.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$54.25. This amount is calculated as follows: \$1,650.00 x 12, divided by 365 days.
5. The Tenant has paid \$9,900.00 to the Landlord since the application was filed.
6. The rent arrears owing to May 31, 2024, are \$28,050.00. This was uncontested at the hearing.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$1,650.00 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.

9. Interest on the rent deposit, in the amount of \$77.44 is owing to the Tenant for the period from December 30, 2020, to May 22, 2024.

Tenant's Sections 82 Claims

10. At the hearing, the Tenant raised the following issues pursuant to section 82 of the Residential Tenancies Act, 2006 (the 'Act'):

- Mice present in the rental unit,
- Frozen pipes;
- Inadequate snow removal;
- Landlord failing to provide rent receipts;
- Water penetration into the basement;
- Exterior deck poorly maintained;
- Issues with the furnace, refrigerator, and washing machine; and
- Invasions of the Tenant's privacy;

11. I noted at the hearing that the Tenant first served the Landlord and filed with the Board intent to raise the above issues pursuant to section 82 of the Act on November 7, 2023, and this was uncontested.

12. Subsection 29(2) of the Act states that:

No application may be made under subsection (1) more than one year after the day the alleged conduct giving rise to the application occurred. 2006, c. 17, s. 29 (2).

13. I found that for the following issues the alleged conduct giving rise to the application occurred more than one year prior to November 7, 2023. I therefore dismissed those portions of the Tenant's section 82 claims:

- Frozen pipes;
- Issues with the furnace, refrigerator, and washing machine; and
- Invasions of the Tenant's privacy.

Mice in the rental unit

14. It is the Tenant's evidence that there were mice present since the start of the Tenancy and the Landlord's response was insufficient to remedy the issue. The Tenant submitted as evidence email correspondence with the Landlord from March 13, 2021, to November 28, 2023. I note that although the issue with mice is alleged to be ongoing, only occurrences and evidence from November 8, 2022, onwards will be considered pursuant to subsection 29(2) of the Act. The Tenant's evidence contains 2 photos of dead mice during that period as well as email correspondence starting on November 8, 2022, which demonstrate that by that time the Landlord appeared to be responsive to the Tenant's complaints about mice and had hired a professional pest control company who was attending the property with some regularity to address the mouse problem.

15. In the case *Onyskiw v. CJM Property Management*, 2016 ONCA 477 (Onyskiw) (CanLII), the Court of Appeal for Ontario 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. Therefore, simply because there has been issues with the presence of mice in the rental unit, this does not automatically amount to a breach of subsection 20(1) of the Act by the Landlord.
16. The evidence before me is that while there were some mice present in the rental unit, the Landlord took action to address them. The Tenant failed to lead sufficient evidence that the Landlord's response to the mice was unreasonable. Rather, I find that the Landlord took sufficient steps reasonable in the circumstances to address the problem by retaining a professional pest control company to attend the property and address the issue. Accordingly, this portion of the Tenant's section 82 issues is dismissed.

Inadequate snow removal

17. It is the Tenant's evidence that the Landlord consistently failed to remove snow from the property in a timely manner. The parties agreed that the Landlord had retained a snow removal contractor throughout the tenancy, however it is the Tenant's position that the contractor did not always attend after a snowfall in a timely manner resulting in the Tenant being unable to leave the property in his car. The Tenant submitted evidence that included photos and email correspondence with the Landlord regarding this issue. However, I note that except for incidents that occurred in December 2022, the remainder of the evidence related to occurrences before November 8, 2022, and is therefore not being considered in accordance with subsection 29(2) of the Act.
18. Upon review of the Tenant evidence, I note that there were four documented incidents where the Tenant complained to the Landlord about snow removal after November 7, 2022. With respect to the first three, between December 12 and 19, 2022, the Landlord responded by email to the Tenant's inquiry in 33 minutes or less and indicated that a contractor would be dispatched. I did not find that the photos provided by the Tenant show a significant quantity of snow accumulation that would prohibit safe passage on the property. With respect to the fourth incident on December 23 and 24, 2022, the emails show a similar same day response by email from the Landlord advising that they would attempt to dispatch a contractor but also noting that the response may be slower as it was Christmas weekend.
19. The Landlord stated that they have always made a good faith effort to have snow removed through their contractor in a timely manner, and that the emails submitted by the Tenant demonstrate timely responses to the Tenant's complaints. I agree with the Landlord's position and find that the emails do show a reasonable effort to both respond to the Tenant's email inquiries and to have the snow removed within a reasonable amount of time.

20. Therefore, on the evidence before me, I find on a balance of probabilities that the Landlord took sufficient steps reasonable in the circumstances to address snow removal at the rental unit. Accordingly, this portion of the Tenant's section 82 issues is dismissed.

Landlord failing to provide rent receipts

21. It was uncontested at the hearing that the Landlord has failed to provide rent receipts to the Tenant after the Tenant requested on April 5, 2023, that they be provided. The Landlord's Agent indicated that while they know of no reasons why receipts would not have been issued, they could not recall having ever given the Tenant the requested rent receipts.

22. Subsection 109(1) of the Act states:

A landlord shall provide free of charge to a tenant or former tenant, on request, a receipt for the payment of any rent, rent deposit, arrears of rent or any other amount paid to the landlord. 2006, c. 17, s. 109 (1).

23. On the uncontested evidence before me, find that the Landlord has failed to provide the Tenant with rent receipts in accordance with subsection 109(1) of the Act after the Tenant requested that they be provided. Accordingly, the Tenant is entitled to a remedy, which will be addressed in the remedies section below.

Water penetration into the basement

24. It was the Tenant's evidence that there was an ongoing issue of water penetration into the basement through the foundation and around the sump pump which persisted until approximately April 2023, when the issue was resolved by the Landlord. The washer and dryer are located in the basement and the Tenant states that water in the basement sometimes kept him from being able to use them. He also stated that he uses the basement for storage of belongings in boxes, but that as of the hearing there has not been any damage caused to those items. Finally, the Tenant also stated that water in the basement may pose a "health risk", but that he "cannot calculate" the risk that may be posed.

25. It was the Landlord's position that the rental unit is an older home and the basement is an unfinished section that is not used for habitation, but is rather more like a crawl space. They stated that the Landlord made ongoing attempts to resolve the issue as evidenced by their email correspondence with the Tenant. They stated that they had contractors attend to replace several sump pumps and to seal cracks in the foundation at a significant cost to the Landlord.

26. I agree with the Landlord's position and find that the Tenant's evidence shows that the Landlord took reasonable steps in the circumstances to resolve the issue in accordance with Onyskiw. I also find that that the Tenant failed to bring sufficient evidence on the effect of the water penetration such as specific dates and times of the occurrences, how those occurrences affected the Tenant, or any documentation in support of the alleged effect on the Tenant's health. Accordingly, on the evidence before me I cannot find that the Landlord

was in breach of their maintenance obligations. Therefore, this portion of the Tenant's section 82 submissions is dismissed.

Exterior deck poorly maintained

27. The Tenant submitted that the Landlord failed to maintain an exterior deck in good condition as it had old deck boards with protruding nails which needed to be replaced. The Tenant submitted email correspondence with the Landlord which showed the Tenant brought the issue to the attention of the Landlord on July 28, 2023, and that the Landlord responded by email the same day and scheduled maintenance staff to conduct an inspection. The Tenant stated the Landlord decided to remove the deck, but later repaired the deck instead sometime in November of 2023.
28. It is the Landlord's position that the maintenance issue with the deck was not necessarily interfering with the Tenant in any way and that it was addressed by the Landlord in a manner that was appropriate and timely. I agree with the Landlord's position and find that the Tenant's evidence shows that the Landlord took reasonable steps in the circumstances to resolve the issue in accordance with Onyskiw. Accordingly, on the evidence before me I cannot find that the Landlord was in breach of their maintenance obligations. Therefore, this portion of the Tenant's section 82 submissions is dismissed.

Remedies

29. The Tenant has proven, on a balance of probabilities their claim under section 82 of the Act that the Landlord was in breach of their requirement to provide rent receipts in accordance with subsection 109(1) of the Act after the Tenant requested that they be provided. The Tenant requested a 20% abatement of rent but also stated that as of the hearing the Landlord's failure to provide receipts has had no negative impact on the Tenant, although they believe it may cause them issues with filing taxes in the future.
30. Given that the Tenant has claimed no negative impact resulting from this breach, I find it appropriate in the circumstances to require that the Landlord provide the Tenant with the required receipts by July 17, 2024. If the Landlord fails to comply with this requirement, the Tenant shall be entitled to a 5% abatement of rent for the period from April 6, 2023, to July 17, 2024, in the amount of \$1,272.16. This will be calculated as follows: 469 days x \$54.25 x 5%.

Relief from eviction

31. The Tenant stated that fell into arrears of rent due to withholding the lawful rent in response to their alleged maintenance issues, but that they now know this was not an appropriate response. However, due to having been unemployed for 10 months in 2022, they no longer have all of the unpaid rent in arrears that they retained and they would therefore require an additional 10 to 14 months to repay the rent in arrears owing.
32. It is the Landlord's position that the Tenant withheld rent for maintenance issues illegally and that if the Tenant is still retaining any of the arrears of rent owing it should be paid immediately. They further submitted that to grant any relief from eviction would prejudice

the Landlord as they have addressed all of the Tenant's maintenance issues reasonably and at a significant cost while the Tenant continued to not pay their rent.

33. I find that the Tenant is in significant arrears of rent in an amount that is approaching the Board's maximum monetary jurisdiction and to allow the Tenancy to continue any longer unless the Tenant pays the rent owing would only further prejudice the Landlord. Therefore, I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) 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:**
 - \$29,886.00 if the payment is made on or before June 30, 2024. See Schedule 1 for the calculation of the amount owing.

OR

 - \$31,536.00 if the payment is made on or before July 8, 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 July 8, 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 July 8, 2024**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$26,052.06. 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 \$54.25 per day for the use of the unit starting May 23, 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 June 24, 2024, the Tenant will start to owe interest. This will be simple interest calculated from June 25, 2024, at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before June 24, 2024, then starting June 25, 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 June 25, 2024.
10. The Landlord shall provide the Tenant with all receipts of rent owing by June 24, 2024.
11. If the Landlord fails to comply with the conditions of paragraph 10, the Landlord shall owe the Tenant \$1,272.16 for an abatement of rent, which shall be deducted from the total amount owing to the Landlord.

June 27, 2024
Date Issued

Kyle Anderson
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 January 9, 2025, 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 June 30, 2024

Rent Owing To June 30, 2024	\$39,600.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$9,900.00
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	\$29,886.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before July 8, 2024

Rent Owing To July 31, 2024	\$41,250.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$9,900.00
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	\$31,536.00

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

Rent Owing To Hearing Date	\$37,493.50
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$9,900.00
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	- \$1,650.00
Less the amount of the interest on the last month's rent deposit	- \$77.44
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	\$26,052.06
Plus daily compensation owing for each day of occupation starting May 23, 2024	\$54.25 (per day)

2024 ONL TB 40178 (CanLI)