



Order under Section 69 Residential Tenancies Act, 2006

Citation: CASA MIA APARTMENTS v Barnes, 2024 ONLTB 935

Date: 2024-01-16

File Numbers: LTB-L-049474-23 & LTB-T-086408-23

In the matter of: 204, 53 CUMBERLAND STREET SOUTH
THUNDER BAY ON P7B2T6

Between: CASA MIA APARTMENTS Landlord

And

Tyler Barnes Tenant

CASA MIA APARTMENTS (the 'Landlord') applied for an order to terminate the tenancy and evict Tyler Barnes (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (LTB-L-049474-23).

The Tenant applied for an order determining that the Landlord failed to meet the Landlord's maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards (LTB-T-086408-23).

This application was heard by videoconference on December 1, 2023.

The Landlord's Agent, Darlene Lewis, the Tenant, and the Tenant's support person, Jennifer Koopman, attended the hearing.

Determinations:

1. On November 7, 2023 this matter was adjourned to be combined with the Tenant's T6 application (LTB-T-086408-23) as the evidence for the T6 application could impact the outcome of the Landlord's application for rent arrears.
2. At the first hearing, the Tenant agreed to pay rent on the 1st until the matter reconvened. The Tenant had paid the rent for December by this hearing date.

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3. 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.
4. As of the hearing date, the Tenant was still in possession of the rental unit.
5. The lawful rent is \$895.00. It is due on the 1st day of each month.

6. Based on the Monthly rent, the daily rent/compensation is \$29.42. This amount is calculated as follows: \$895.00 x 12, divided by 365 days.
7. The Tenant has paid \$1,567.00 to the Landlord since the application was filed.
8. The rent arrears owing to December 31, 2023 are \$11,830.00.
9. The Tenant consented to the Landlord's request to amend the application to show the total arrears owing for November 2022 to June 2023 are \$6,460.00. The N4 notice included the rent charged and still owing for November 2022 to May 2023. The L1 application only included June rent as charged and owing. The Tenant did not dispute the arrears owing since November 2022.
10. When asked about the arrears owing to the Landlord, the Tenant stated he could not pay rent as he was spending \$10.00-\$30.00 per day eating take out because the fridge was broken. The Tenant's allegation respecting the fridge is set out below.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. There is no last month's rent deposit.

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13. As explained below, the Tenant did not prove on a balance of probabilities the allegations contained in the application regarding a dysfunctional fridge and broken bathroom door. Therefore, the Tenant's application is dismissed.
14. I am not satisfied that the Landlord failed to meet their obligations under subsection 20(1) of the Act to repair the rental unit and did not fail to comply with maintenance standards.
15. It is undisputed the Tenant's mother contacted the Landlord in the spring of 2023 to report the fridge not working. The Tenant's mother spoke to the Landlord about the fridge two more times between May 2023 and October 2023. The Landlord never investigated the issue prior to November 2023.
16. At this hearing, the Tenant claimed that the weather stripping was loose on the fridge, which impacts it closing properly. The Tenant stated there is tape holding the fridge together. In the application and at the first hearing, the Tenant alleged he could not use the fridge at all.
17. The Landlord conducted an inspection after the November 2023 hearing and found the fridge to be in working order and no tape was on the fridge.
18. After the Landlord testified about the inspection of the fridge in November 2023, the Tenant the state that the fridge does work, as he keeps items in the freezer which stay frozen, and items in the fridge which stay cool.
19. In *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477, the Court of Appeal held that the LTB should take a contextual approach and consider the entirety of the factual situation in determining whether there was a breach of the landlord's maintenance obligations, including whether the landlord responded to the maintenance issue reasonably

in the circumstances. The court rejected the submission that a landlord is automatically in breach of its maintenance obligation as soon as an interruption in service occurs.

20. In this case, the Tenant provided inconsistent evidence regarding the functionality of the fridge. Given the unreliability of his evidence, I am not satisfied there is an issue with his fridge nor am I satisfied that the Landlord breached their responsibility under section 20 of the Act.
21. In the Tenant's application, he also claimed there was a missing and/or broken bathroom door. At the hearing, the Tenant took responsibility for the bathroom door being broken and decided to withdraw that portion of the application.

Relief from eviction

22. 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 January 31, 2024 pursuant to subsection 83(1)(b) of the Act.
23. After addressing the Tenant's two maintenance concerns listed in the T6 application, the Tenant was again asked the circumstances that lead to the arrears. The Tenant testified that as of January 2023 he was no longer gainfully employed. He previously worked for Skip the Dishes and Uber, but that business was slow. As of the hearing date, the Tenant was unemployed and had just begun receiving O.W. but that amount is less than the current monthly rent.
24. The Tenant did not disagree with my suggestion that he cannot afford the monthly rent for the unit or to pay the arrears owing to the Landlord. The Tenant requested 60 days to find alternative housing and vacate the apartment.
25. The parties were made aware of this termination date at the hearing.

It is ordered that:

1. The Tenant's application LTB-T-086408-23 is dismissed.
2. In accordance with the L1 application LTB-L-049474-23, the tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
3. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$11,344.00 if the payment is made on or before January 31, 2024. See Schedule 1 for the calculation of the amount owing.
4. 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 January 31, 2024 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
5. **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 January 31, 2024**

6. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$9,583.42. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
7. The Tenant shall also pay the Landlord compensation of \$29.42 per day for the use of the unit starting December 2, 2023 until the date the Tenant moves out of the unit.
8. If the Tenant does not pay the Landlord the full amount owing on or before January 27, 2024, the Tenant will start to owe interest. This will be simple interest calculated from January 28, 2024 at 7.00% annually on the balance outstanding.
9. If the unit is not vacated on or before January 31, 2024, then starting February 1, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. 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 1, 2024.

January 16, 2024
Date Issued

Elena Jacob
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 1, 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	\$12,725.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,567.00
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	\$11,344.00

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

Rent Owing To Hearing Date	\$10,964.42
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,567.00
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	- \$0.00
Less the amount of the interest on the last month's rent deposit	- \$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 amount owing to the Landlord	\$9,583.42
Plus daily compensation owing for each day of occupation starting December 2, 2023	\$29.42 (per day)