



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

Citation: Metcap Living Management Inc. v Raycroft, 2024 ONLTB 9609

Date: 2024-02-14

File Number: LTB-L-071496-22

In the matter of: 411, 96 Jameson Ave Toronto
M6K2X7

Between: Metcap Living Management Inc. Landlord

And

Patricia Raycroft Tenant

Metcap Living Management Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Patricia Raycroft (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on December 6, 2023.

The following people attended the hearing:

The Landlord's agent, Fjoralba Jano (FJ).

The Landlord's legal representative, Michelle Forrester. The Tenant, Patricia Raycroft.

The Tenant's legal representative, Olivia Dooley.

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 \$1,037.30. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$34.10. This amount is calculated as follows: $\$1,037.30 \times 12$, divided by 365 days.
5. The Tenant has paid \$28,145.00 to the Landlord since the application was filed.
6. The rent arrears owing to December 31, 2023 are \$207.79.
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 \$990.39 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 \$34.95 is owing to the Tenant for the period from January 1, 2021 to December 6, 2023.

Tenant raised section 82 issues

1. The Tenant raised the following issues with claims the Landlord is in breach of their maintenance obligations under the Act.
 - a. Bedroom paint peeling;
 - b. Broken closet door;
 - c. Front door does not close allowing cold air;
 - d. Balcony door and window allow cold air and water to leak in;
 - e. Mold in closet; and
 - f. Damaged outlet behind fridge.
2. The parties engaged in private conversation prior to the hearing and emerged with issues the Tenant intended to raise as resolved.
3. The parties agreed that the Landlord has made arrangements for the Landlord to address the issues by December 8, 2023 as follows:
 - b. Broken closet door;
 - d. Balcony door and window allow cold air and water to leak in;
 - e. Mold in closet; and
 - f. Damaged outlet behind fridge.

4. Item c. the front door, the parties agree that the Landlord will hire a contractor to assess any damage to the front door, and make any repairs necessary to bring the door into a good state of repair.

Tenant evidence: bedroom paint peeling

5. The position of the Tenant is the Landlord was scheduled to paint the Tenant's apartment approximately mid summer of 2021. The superintendent requested the Tenant move items into the middle of the bedroom floor so the Landlord could perform the painting.
6. The Tenant testified her husband moved the items as requested and subsequently suffered a hernia in doing so. The Tenant and her husband are both in their mid 60's.
7. The Tenant did not submit any evidence to support her claim her husband suffered any injuries.
8. The Tenant testified that since her husband sustained the injury neither the Tenant nor her husband have been able to remove the items from the middle of the bedroom floor and as such, the Tenant has not been able to sleep in her bedroom or gain full use of the bedroom.
9. The Tenant claims the Landlord was obligated to move the items in the bedroom so the Tenant and her husband could regain full use of the bedroom.
10. The Tenant testified that during the December 2021 annual inspection her husband was mad and didn't understand what was going on which is why he didn't allow the Landlord access to the rental unit to perform the repairs.
11. The Tenant's husband did not attend the hearing to provide direct testimony to the Landlord's claims he denied access to the rental unit.
12. The Tenant is seeking a rent abatement of 30% for the alleged maintenance breach by the Landlord.

Landlord evidence: bedroom paint peeling

13. The Landlord does not dispute the Tenant's bedroom paint is peeling and requires maintenance. Since being made aware of the issue the Landlord has attempted on multiple

occasions to address the issue on several occasions, but has been denied access to the rental unit either by the Tenant or the Tenant's husband.

14. The Landlord also maintains they were not made aware of the Tenant's claim that they required assistance moving the items from the middle of the bedroom floor so the Tenant could regain access to the bedroom. The Landlord was only made aware of the painting issues.
15. The Landlord's position is that they are not in breach of their maintenance obligations under the Act and request the Tenant's section 82 issue be dismissed.
16. FJ testified that on March 31, 2021, December 2021, and January 27, 2022, the Landlord has attempted to address the Tenant's bedroom paint issue, however the Tenant's husband has refused entry into the rental unit.
17. The Landlord submitted as evidence a copy of a contractors quote dated March 31, 2021 with an itemized list of maintenance repairs to be completed in the Tenant's rental unit including the painting and repair of the bedroom walls. The attending worker wrote a handwritten comment beside the bedroom item that the Tenant did not allow access to the bedroom.
18. FJ testified that on March 31, 2021, she had to call a social worker to get her involved and assist with the Tenant's husband who was denying access to the bedroom on March 31, 2021. The social worker said there was nothing she could do and the workers were not granted access to paint the Tenant's bedroom.
19. Another attempt was made in December 2021 and FJ testified that again, the Tenant's husband said he did not want the work done and denied access to the rental unit.
20. The Landlord submitted a copy of a city property standards work order issued by the city of Toronto initiated by the Tenant for maintenance issues with the rental unit. The order is dated December 10, 2021. The work order does not indicate any issues with the bedroom paint or related items in the middle of the bedroom floor.
21. FJ testified she performed an annual inspection in early January 2022 and the Tenant would not allow access to the rental unit. FJ testified that the Tenant was yelling and screaming at her and denied access in order for the Landlord to assess the required repairs and the required painting.
22. JF testified that each time the Landlord has attempted to gain access to the Tenant's rental unit, in order to perform the painting repairs in the bedroom, the Tenant or her husband have denied access to the rental unit.
23. It's also the Landlord's position that the Tenant has not asked for assistance with moving the items from the middle of the bedroom floor back to their original position and the Tenant has not indicated needing assistance by submitting any maintenance request or any complaint to property standards. .

The Act and Analysis

24. Section 20 of the Act holds the landlord responsible for providing and maintaining the rental unit in a good state of repair. This applies even if the tenant was aware of the state of non-repair before the tenancy started:

20 (1) A landlord is 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. 2006, c. 17, s. 20 (1).

(2) Subsection (1) applies even if the tenant was aware of a state of non-repair or a contravention of a standard before entering into the tenancy agreement. 2006, c. 17, s. 20 (2).

25. In *Onyskiw v. CJ, M Property Management*, 2016 ONCA 477 (CanLII), the Court of Appeal held that the Board ought to apply a contextual approach in determining whether a landlord has breached its maintenance obligations under the Act. A landlord will not be responsible for breaching its obligations if, after considering all of the circumstances, it is found that the landlord addressed the maintenance issues in a reasonable manner.

26. I must also apply subsection 30(2) of the Act, and consider whether the tenant, or former tenant, advised the landlord of the alleged breaches before applying to the Board, and also the parties' duty to mitigate found in section 16 of the Act.

27. For the following reasons I find the Tenant's claim the Landlord is in breach of their maintenance obligation in accordance with the Act is dismissed.

28. I prefer the direct testimony of FJ at the hearing regarding the Tenant's husband not granting access to the rental unit. The Tenant was not present for many of the interactions between the Landlord employees and her husband, and in the absence of the Tenant's husband to provide his own direct testimony I prefer the testimony of FJ.

29. I am persuaded by the quote for work to be done on March 31, 2021 with the workers hand written note that the Tenant's husband denied access to the rental unit to perform the maintenance on the bedroom walls.

30. Pursuant to section 27 of the Act the Tenant has an obligation to allow the Landlord access to the rental unit to repair the items the Landlord has been made aware of where the Landlord has given written notice to the tenant at least 24 hours before the time of entry. In this case the Landlord has attempted on several occasions, by providing proper notice, to do so and the Tenant has denied the Landlord access to the rental unit.

31. I am not satisfied the Tenant has provided sufficient testimony or evidence as to why the items are still placed in the middle of her bedroom floor. While I accept that the Tenant's physical limitation would prevent her from moving the items herself, the Tenant did not provide any evidence to the Board to support her claim her husband was unable to move the items.
32. Even if I accept that the husband's injuries or physical limitations prevented him from moving the items to regain use of the bedroom, I do not find the Tenant credible in her testimony given her lack of particulars and specific details that she asked for help from the Landlord, neighbours or friends and attempted to minimize her losses.
33. None of the work orders submitted to the Landlord from the Tenant had any request from the Tenant to perform such work as helping move the items in her bedroom.
34. Given that the Landlord is not disputing the repairs required in the Tenant's rental unit, and given the Landlord was not made aware of the Tenant's situation with the items in the middle of the bedroom floor, I find the Tenant's claim under section 82 must be dismissed.

Tenant requested to waive filing fee

35. Regarding the Tenant's request the Board waive the Landlord's filing fee I am denying the Tenant's request for the following reasons.
36. The Board charges Landlord's and Tenant's a filing fee when an application is filed with the Board.
37. This fee is a discretionary decision to be granted to a successful application under the Board's Rules of Procedures section 23 Costs that states:

Ordering the Application Fee as Costs

23.1 If the applicant is successful, the LTB may order the respondent to pay the application fee to the applicant as costs.

38. If the Tenant were not in arrears, the Landlord would not have had to file the application and given that the Tenant created this situation, the Tenant shall pay the cost of the filing fee.

Section 83 relief from eviction

39. The Tenant and her husband live in the rental unit. The Tenant and her husband are in their late 60's and the Tenant is in a wheelchair. The Tenant testified she has respiratory issues however the Tenant did not submit any documentary evidence to support the claim.
40. The Tenant has been residing in the rental unit since 2018.
41. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and, including submissions that the Tenant does not have young children the Board needs to consider living with them, and whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
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 not be unfair to postpone the eviction until March 31, 2024 pursuant to subsection 83(1)(b) of the Act.
43. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
44. This order contains all reasons for the determinations and order made. No further reasons will be issued.

It is ordered that:

1. The Tenant's s.82 issues are dismissed.
2. 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:
 - \$1,431.09 if the payment is made on or before February 29, 2024. See Schedule 1 for the calculation of the amount owing.
- OR
- \$2,468.39 if the payment is made on or before March 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 March 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 March 31, 2024
6. As of the date of the hearing, the amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the arrears of rent, compensation and the cost of filing the application the Landlord is entitled to by \$2,607.94. See Schedule 1 for the calculation of the amount owing. However, the Landlord is authorized to deduct from the amount owing to the Tenant \$34.10 per day for compensation for the use of the unit starting December 7, 2023 until the date the Tenant moves out of the unit.
7. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
8. If the unit is not vacated on or before March 31, 2024, then starting April 1, 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 April 1, 2024.

February 14, 2024

Date Issued

Greg Brocanier

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 October 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 February 29, 2024

Rent Owing To February 29, 2024	\$29,390.09
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$28,145.00
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	\$1,431.09

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

Rent Owing To March 31, 2024	\$30,427.39
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$28,145.00
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	\$2,468.39

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

Rent Owing To Hearing Date	\$29,615.89
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$28,145.00
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	- \$990.39
Less the amount of the interest on the last month's rent deposit	- \$34.95

Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
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Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$(631.55)
Plus daily compensation owing for each day of occupation starting December 7, 2023	\$34.10 (per day)

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Order Page