



Order under Section 69 Residential Tenancies Act, 2006

Citation: 1000032190 Ontario Inc. v Secord, 2024 ONLTB 16593
Date: 2024-05-15

File Number: LTB-L-033176-22/LTB-T-027606-22

2024 ONLTB 16593 (CanLII)

In the matter of: 2425 NORTH SCHOOL RD RR 2 HAVELOCK
ON K0L1Z0

Between: 1000032190 Ontario Inc. Landlord

And

Amy Secord Tenant Joel Micallef

000032190 Ontario Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Amy Secord and Joel Micallef (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe (L1 application).

Amy Carolyn Secord (ACS) and Joel Christian Micallef (JCM) (the 'Tenants') applied for an order determining that 1000032190 Ontario Inc.(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 (T6 application).

This applications were heard together heard by videoconference on September 28, 2022 and January 11, 2024.

The Landlord's agent J. Rasalingam and the Tenants attended the hearing. The Tenants were unrepresented at the first sitting and were represented by R. Forget on January 11, 2024. The Landlord was represented by J. Jayapati at the first sitting, and A. Dolganos appeared on behalf of the Landlord on January 11, 2024.

On October 3, 2022, the Board granted the Tenants permission to pay the rent into the Board until the applications were decided (LTB-T-027606-22-IN/LTB-L-033176-22-IN). Given the delay in the

proceeding a large sum of money has been paid into the Board. The Landlord did not request that part of the money held in trust be released.

The Landlord has since sold the property. Details were not provided with respect to the closing date.

Determinations:

L1 application

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Nonpayment of Rent (N4 Notice). The Tenants 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 Tenants were still in possession of the rental unit.
3. The lawful rent is \$3,000.00. It is due on the first day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$98.63. This amount is calculated as follows: \$3,000.00 x 12, divided by 365 days.
5. The Tenants has paid \$60,000.00 into the LTB since the application was filed.
6. The rent arrears owing to May 31, 2024 are \$15,000.00.
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 \$3,000.00 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. 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 grant relief from eviction pursuant to subsection 83(1)(a) of the Act.

T6 application

10. The rental unit is a house in a rural area. Also situated on the property is a garage, and barn and a paddock for horses. The Tenants do not keep horses.
11. The Landlord and the Tenants signed a standard lease for a one-year term commencing on March 1, 2022. The tenancy commenced on February 27, 2022, after the Landlord agreed to let the Tenants move in earlier.

12. The relationship between the Landlord and the Tenants deteriorated within six weeks of the tenancy, after the basement of the rental unit was flooded with water. The parties had serious disagreements over how the flood should be addressed. Consequently, the Tenants filed the maintenance application on May 17, 2022.
13. The Tenants raised the following maintenance issues in their email to the Landlord dated April 10, 2022:
 - a) Mould;
 - b) Hot tub;
 - c) Above ground pool;

 - d) Propane tank
 - e) Debris and garbage on property
 - f) Roof and eavestroughs
 - g) Stairs to basement
 - h) Deck
14. The Tenants sought an abatement of rent in the amount of at least \$2,000.00 a month, two-thirds of the monthly rent.
15. 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.
16. I am not satisfied that the Landlord failed to meet their obligations under subsection 20(1) or section 16 of the Act to repair or maintain the rental unit or residential complex. The Tenants chose to co-operate with the Landlord to resolve some issues and obstructed the Landlord's efforts concerning other repairs, particularly where the Tenants had a conflict of interest (they wanted to be paid to do the work in the manner they saw fit).

Mould

17. On April 5, 2022, there was a flood in the basement caused by a sump pump failure (rupture of the flex hose). The Landlord called its insurer and Servpro, a rehabilitation company, attended the next day to clear the water and dry the basement with dehumidifiers. Servpro returned to remove the compromised flooring. The drying of the basement was completed on April 10, 2022. Servpro returned on April 14, 2022 to conduct an air test for fungal spores and brought in a plumber to replace the sump pump connections. The Landlord paid Servpro a total of \$10,516.67 for its services.

18. The Tenants were not satisfied with the work done. JCM insisted that he is a professional contractor with more than 20 years experience and knew what needed to be done. He claimed that black rot had already set in the vein of the wooden studs on the wall therefore the Landlord needed to tear up the walls and studs of the basement four feet from the ground. JCM offered to do the work (walls and flooring) for \$500.00 a day for 6 days (labour only) and bill the Landlord for materials. The Landlord refused because he believed JCM had a conflict of interest and was only a handyman.
19. The Tenants reported the handling of the flood to the Township of Havelock-BelmontMethuen. The Landlord offered to send Servpro to do a second air test. The Tenants stated that they would not allow Servpro to do another test because of customer complaints against the company. The Township concluded that they had no role to play because the Landlord had addressed the problem and was willing to address outstanding matters.
20. The Tenants did allow Servpro to collect air samples on July 14, 2022. The fungal spore analysis showed that the air upstairs had less fungal spores than the air outside, but the basement had elevated level of Aspergillus spores due to high humidity levels. Servpro recommended using a dehumidifier in the basement at all times. The Landlord provided the Tenants with a dehumidifier.
21. The Tenants refused to allow Air Quality Canada to evaluate the basement for mould in November 2022. They were of the view that testing in cold weather would underestimate the level of mould in the basement. The Tenants' approach was to seal the basement off, covering the vents with plastic and turning off the furnace. They use a pellet stove upstairs for heating. According to the Tenants they sprayed the basement with vinegar on a monthly basis to contain the mould. In October 2023, the Tenants called in an inspector from Peterborough Public Health to inspect the rental unit. The inspector noted some visible mould in the basement and a musty smell in the house, particularly in the basement. The inspector suggested using a dehumidifier and improving ventilation by opening windows. The Tenants disregarded the advice and kept the basement sealed. This worsened the condition of the basement, much to the chagrin of the Landlord when the property was inspected in the Fall of 2023 for the purpose of selling it.
22. I find that the Landlord's response to the mould issue was reasonable under the circumstances. The evidence is clear that the growth of mould in the basement was avoidable and was due to the Tenants' actions. The Tenants obstructed the Landlord's efforts to address the issue. JCM wanted to be paid to renovate the basement, failing which the Tenants wanted to create conditions that would support what they referred to as an "enormous" abatement of rent. Under the circumstances, the Tenants are not entitled to an abatement of rent with respect to the mould problem.

Hot tub

23. The Tenants alleged that that Landlord failed to maintain the hot tub on the back deck. They sought an abatement of rent in the amount of \$400.00 a month for loss of use of the hot tub.
24. In response to the Tenants' request for the repair or replacement of the hot tub the Landlord claimed that the hot tub was broken and was not included in the rent. The Landlord sought to remove the hot tub on April 24, 2022, but the Tenants objected. The Tenants sent the Landlord an email dated April 23, 2022 asking the Landlord to cease any activity with respect to the property until issues were dealt with through legal channels.
25. In June 2022, the Tenants sent an email to the Landlord's property manager stating that they had the hot tub inspected and that it was an easy fix. Some parts were needed. No invoice was provided to the Landlord. The Landlord subsequently hired Sterling Pools to inspect the hot tub. A technician from Sterling Pools attempted to inspect the hot tub on August 9, 2022. The technician reported that he asked the Tenants whether the breaker for the hot tub was inside the house. The male Tenant, JCM, responded by swearing at the technician, telling him the Landlord owed him a new hot tub and that no one was allowed in the basement because of mould in the basement. JCM asked the technician not to look at the hot tub and to "get out of there." Sterling Pools indicated on their invoice that they would not be returning to the property because of the anger and hostility demonstrated by JCM. The conduct reported is consistent with JCM's conduct in other interactions with the Landlord and during the hearing. JCM subsequently claimed that the hot tub was not fixable and that he wanted to get a new tub and deduct the cost from the rent. JCM offered to instal the hot tub himself. The Landlord did not approve JCM's plan.
26. I find that the hot tub is not included in the rent. The MLS listing only referred to the above ground as one of amenities included. In the part of the listing indicating which amenities are included there is no "X" in the box referring to the tub, specifically excluding the hot tub. Even if I am wrong, the Tenants would not be entitled to an abatement of rent because they prevented the Landlord from addressing the issue (*Guideline 5, Landlord and Tenant Board Interpretation Guidelines*).

Above Ground Pool

27. In April 2022, the Tenants informed the Landlord that the above ground pool was not closed down properly for the winter. They suspected that the pool had been damaged as a result. The Tenants requested that the pool be inspected and certified. The Landlord initially took the position that the pool was there for the Tenant's convenience and that if they wanted to use it they should arrange to fill it and maintain it. After the Landlord hired Kawartha Property and Legal Services to manage the property, the Landlord hired Sterling Pools to inspect the pool. An appointment was made for June 8, 2002 but the company cancelled the appointment on the ground that they did not receive a deposit from the Landlord. The Landlord claimed Sterling Pools did not ask for a deposit and apologized to

the Tenants for the misunderstanding. The Tenants informed the Landlord they found a company that could reopen the pool within a week. For a base rate of \$200.00 plus \$35.00 per hour for labour for an estimated 2 hours. The Landlord did not object but asked the Tenants to provide the name of the company and the extent of the repairs required so that the Landlord could authorize the work. The Landlord also wanted the company to bill the Landlord directly. The Tenants did not provide the Landlord with acceptable or reliable invoices or receipts for the opening of the pool. The Tenants did not provide the name of the person who allegedly opened the pool, claiming that they did not want the Landlord to harass the person with respect to their qualifications. The Landlord insisted on sufficient detail to allow the Landlord to verify the extent of the work done and the amount the Tenants paid for the work. At the hearing, the Tenants claimed the opening of the pool cost \$540.00, twice as much as the estimate they provided the Landlord in 2022 but did not submit invoices or receipts in support of their claim. It is instructive that the Tenants sent the Landlord the receipt for changing the front door lock and the Landlord reimbursed them. Under the circumstances, I find that the Tenants failed to establish that they incurred the expense claimed.

Propane Tanks

28. The Tenants had a verbal altercation with representatives from Casey's Propane, the Landlord's propane supplier, on or about April 11, 2022. The dispute was over the bill for supplying propane to the residential complex. The Tenants believed the cost of the propane was high and not at the price originally offered by Casey's Propane. They also believed that their propane consumption was high because of leaks. The Landlord sent Casey's Propane to the complex on April 20, 2022 to check for leaks. No leaks were found. In any event the Tenants stopped using propane once the supply ran out. After the Landlord declined to change its propane supplier, the Tenants refused to deal with Casey's Propane. The Tenants chose to use a pellet stove to heat part of the house. I find that the Landlord fulfilled its maintenance obligations under the Act with respect to the propane tanks.

Garbage and debris on property

29. The Tenants moved in during winter. The Tenants complained to the Landlord that after the snow melted they discovered that there were cigarette butts and bottles all over the grounds, horse manure in the horse pen, as well as building materials and abandoned items in the garage. The Tenants offered to hire a crew to clean the yard and barn at \$60.00 an hour and charge the Landlord for any dump fees. The Landlord declined and asked the Tenants for a convenient date for a property management company to remove the garbage and debris. The Landlord hired AIS Property Services to clean the yard and barn at the cost of \$382.79. The work was done in the presence of JCM. I find that the Landlord responded adequately to this maintenance request.

Roof and eavestroughs

30. The home inspector who inspected the roof of the complex 5 months before the Tenants moved in noted that some of the shingle's were brittle and that the roof would need to be replaced in 5-6 years. The inspector noted that the downspouts needed to be extended further away from the house. Even though there were no roof leaks the Tenants insisted on having the roof replaced. The Landlord hired One Plus Roofing Inc. to replace the roof and install new eavestroughs and downspouts at the cost of \$10,735.00. JCM claimed the work was not done properly. There have been no roof leaks. The Landlord went beyond maintenance by replacing the roof 5 years early in the absence of leaks.

Stairs to basement

31. The Tenants asked the Landlord to repair to repair the stairs to the basement because about 30 percent of the tiles were cracked. JCM offered to do the work for \$200.00 (labour) and bill the Landlord for the cost of materials. The Landlord preferred to use a third-party contractor and hired Trackside Interiors of Peterborough to instal carpeting on the stairs at the cost of \$2,147.00. The Tenants were satisfied with the work.

Deck

32. The Tenants requested that the Landlord repair the back deck because there were cracks on some pieces of wood and a few pieces were broken. The Tenants offered to do the minor repairs required if the Landlord paid for the material. The Landlord was willing to repair the deck but wanted to remove the hot tub from the deck and extend the deck to cover the hole that would be created by removing the deck. The repairs did not materialize because of the dispute over whether the deck is included in the amenities. The Tenants refused to allow the Landlord to remove the deck or inspect. The repairs have not been done. An abatement of rent is not appropriate because the disrepair is minor, the Tenants obstructed any work related to the hot tub, and it is reasonable for the Landlord to remove the hot tub as part of repairing the deck.

Remedial work

33. As the property has been sold it is not appropriate to order the Landlord to do any remedial work.

It is ordered that:

1. The Tenants' application is dismissed.
2. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
3. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**

- \$15,186.00 if the payment is made on or before May 26, 2024. See Schedule 1 for the calculation of the amount owing.
- 4. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after May 26, 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 Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before May 26, 2024**
- 6. If the Tenants do not void the order, the Tenants shall pay to the Landlord **\$10,665.45**. This amount includes rent arrears owing up May 15, 2024 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 Tenants. See Schedule 1 for the calculation of the amount owing.
- 7. The Tenants shall also pay the Landlord compensation of \$98.63 per day for the use of the unit starting May 16, 2024 until the date the Tenants move out of the unit.
- 8. If the Tenants do not pay the Landlord the full amount owing on or before May 26, 2024, the Tenants will start to owe interest. This will be simple interest calculated from May 27, 2024 at 7.00% annually on the balance outstanding.
- 9. If the unit is not vacated on or before May 26, 2024, then starting May 27, 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 May 27, 2024.
- 11. \$60,000 together with any accrued interest that the Tenants paid into the LTB in trust shall be released to the Landlord by the LTB.*

May 15, 2024

Date Issued

Egya Sangmuah

Vice Chair, 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 November 27, 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.

*Note: When the LTB directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice.

**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 May 26, 2024

Rent Owing To May 31, 2024	\$75,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$60,000.00
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	\$15,186.00

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

Rent Owing To Eviction Date	\$73,479.45
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$60,000.00
Less the amount of the last month's rent deposit	- \$3,000.00
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	\$10,665.45
Plus daily compensation owing for each day of occupation starting May 16, 2024	\$98.63 (per day)