



Order under Section 69 Residential Tenancies Act, 2006

Citation: Manhas v Brown, 2024 ONLTB 21175

Date: 2024-03-25

File Number: LTB-L-052192-22
LTB-T-037204-22

In the matter of: 121 WATERVIEW COMMON OAKVILLE
ON L6L0E7

Between: Naginder Manhas Landlord
Charles Laurie Hanes

And

Neale Brown Tenant

Naginder Manhas and Charles Laurie Hanes (the 'Landlord') applied for an order to terminate the tenancy and evict Neale Brown (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes. (L1 application LTB-L-052192-22)

The Tenant applied for an order determining that the Landlord substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household (T2 Application, LTB-T-037204-22).

These applications were heard together by videoconference on January 22, 2024.

The Landlord and the Tenant attended the hearing. The Landlord was represented at the hearing by Nasser Amed

Determinations:

L1 Application

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. The Tenant was in possession of the rental unit on the date the application was filed.
3. The Tenant vacated the rental unit on October 18, 2022. Rent arrears are calculated up to the date the Tenant vacated the unit.

4. The rent arrears owing to October 18, 2022, are \$17,958.84.
5. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
6. The Landlord collected a rent deposit of \$5,000.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.
7. Interest on the rent deposit, in the amount of \$70.85 is owing to the Tenant for the period from August 14, 2021, to October 18, 2022.

T2 Application

8. The Tenant's application alleges the Landlord substantially interfered with the Tenant. As explained below the Tenant's application is dismissed.

Failure to Fulfill Lease Obligations:

9. The Tenant asserts that the Landlord failed to install a cement patio as agreed upon in the lease, which affected his enjoyment of the property.
10. The Landlord admits to a delay in installing the cement patio. The Landlord, Charles Hanes, testified at the hearing. CH emphasized that it was eventually completed. He suggests that the delay was communicated to the Tenant and was not intended to diminish his enjoyment of the property.
11. The tenancy commenced on August 14, 2021. Clause 43 of the tenancy agreement reads as follows:
The Landlord agrees to install the following:
 - Cement patio in the backyard
 - Electrical outlet in the basement
12. While the lease agreement provides for a cement patio in the backyard it is silent as to when to when the cement patio would be installed.
13. The Tenant e-mailed the Landlord on April 30, 2022, asking when the patio was going to be installed. The Landlord advised that there were some delays with the contractor. On May 23, 2022, the Landlord e-mailed the Tenant advising the contractor was ready to begin the work. The work was eventually completed the following month. The Tenant emailed the Landlord back thanking him for the advanced notice
14. Section 22 of the Act states that a landlord shall not at any time during a tenant's occupancy of a rental unit substantially interfere with the reasonable enjoyment of the rental unit or the residential complex for all usual purposes by a tenant or the tenant's household.

15. In considering breaches of s.22 the *Board's Interpretive Guideline 2* reads as follows:

The interference must be substantial in nature before it constitutes a breach of section 22 of the RTA. A minor inconvenience or disruption for a brief period of time does not normally result in an abatement of rent: Pajelle Investments Ltd. v. Herbold, [1976] 2 SCR 520, 1975 CanLII 32 (SCC).

16. I find this guideline is applicable in the case at bar. I find the lack of a cement patio to be a minor inconvenience for a brief period, as opposed to substantial interference. The Tenant was aware of the patio was not installed when he moved into the rental unit. I find the Landlord acted reasonably in attempting to get the patio installed. There were delays in installation because of the contractor, but this was beyond the control of the Landlord. I find it would be unfair to punish the Landlord for circumstances beyond his control. I find this to be true especially since the lease agreement was silent on a deadline for the patio to be installed. This portion of the Tenant's application is dismissed.

Illegal Entries

17. The Tenant claims that the Landlord made unauthorized entries into the rental property, constituting harassment and a violation of his privacy and quiet enjoyment of the premises.
18. The Tenant cites multiple incidents where the landlords or their representatives entered the property without notice. He cites specific dates: May 22nd and June 6th, where the Landlord brought workers onto the property unannounced, and June 8th, when workers arrived at 6:30 a.m. to begin work on a concrete deck, also without prior notice. On June 21st, Brown received an improperly served email notice for an entry into his unit to check for hung TVs. The Tenant believes that these entries and the manner of notification felt like harassment.
19. The Landlord contends that all entries into the rental property were conducted lawfully, with proper notices provided in accordance with the *Residential Tenancies Act, 2006* (the 'Act')
20. Section 26 of the Act permits the Landlord to enter the rental unit if the Tenant consents to the entries at the time of entry.
21. Most of the entries occurred in June 2022 when the Landlord and his contractors were attempting to install a concrete patio in the backyard. This was work that the Tenant was requesting be completed, and filed an application based on the Landlord's lack of diligence in completing the work.
22. I find it highly unlikely that the Tenant did not consent to the Landlord's contractors entering the rental unit to complete the work that the Tenant himself requested be completed.
23. The tenancy agreement provided the Landlord provide an e-mail notice of entry. I also note the parties primarily communicated by e-mail on matters related to the tenancy. I find the Tenant had an issue with the reason for the entry, as opposed to the manner in which the

entry was given. The Landlord was within his rights to inspect the rental unit. This portion of the Tenant's application is dismissed.

Harassment

24. The Tenant claims the Landlord harassed him by taking pictures of the Tenant's belongings without his permission. The Tenant further alleges the Landlord harassed the Tenant by serving him with an invalid N13 notice of termination.
25. The Tenant did not lead, or provide the Board, sufficient evidence to support his claim that the Landlord took pictures of his belongings. This portion of the Tenant's application is dismissed.
26. With the respect to the N13, the Landlord was within rights to serve a notice of termination. The fact that the notice was invalid, and the application was eventually withdrawn, does not mean that serving the notice constitute harassment. Landlords often serve notices that are defective on a technicality. I find it would be unduly punitive to consider a single defective notice of termination to constitute harassment. This portion of the Tenant's application is dismissed. **It is ordered that:**

Regarding the T2 Application

1. The Tenant's application is dismissed.

Regarding the L1 Application

2. The tenancy between the Landlord and the Tenant is terminated as of October 18, 2022, the date the Tenant moved out of the rental unit
3. The Tenant shall pay to the Landlord \$13,073.99. This amount includes rent arrears owing up to the date the Tenant moved out of the rental unit and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
4. If the Tenant does not pay the Landlord the full amount owing on or before April 5, 2024, the Tenant will start to owe interest. This will be simple interest calculated from April 6, 2024, at 7.00% annually on the balance outstanding.

March 25, 2024

Date Issued

Bryan Delorenzi
Member, Landlord and Tenant Board

15 Grosvenor St, 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.

Schedule 1
SUMMARY OF CALCULATIONS

A. Amount the Tenant must pay as the tenancy is terminated

Rent Owing To Move Out Date	\$17,958.84
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	- \$0.00
Less the amount of the last month's rent deposit	- \$5,000.00
Less the amount of the interest on the last month's rent deposit	- \$70.85
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	\$13,073.99

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