



Order under Section 69 Residential Tenancies Act, 2006

Citation: Balasingam v Jarvis, 2024 ONLTB 16546

Date: 2024-03-04

File Number: LTB-L-071561-23

In the matter of: 1, 21025 LAKE RIDGE RD PEFFERLAW
ON L0E1N0

Between: Sayanthan Balasingam Landlord

And

Krystle-Lynn Jarvis Tenants Justin Jarvis

Sayanthan Balasingam (the 'Landlord') applied for an order to terminate the tenancy and evict Krystle-Lynn Jarvis, and Justin Jarvis (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on February 27, 2024. The Landlord, the Landlord's Legal Representative, T. Sivapatham, and the Tenant, Krystle-Lynn Jarvis on behalf of both Tenants, attended the hearing. Michelle-Lynne Charlebois (MC) also attended the hearing.

Preliminary Issues:

1. MC, a person named in the application as a Tenant, stated that she was simply a guarantor even though the tenancy agreement, signed on April 20, 2022, shows she is a Tenant. MC first spoke with the Landlord when he called to verify that she could vouch for the Tenants.
2. On receipt of the tenancy agreement, MC asked the Landlord why she was named as a Tenant and he told her the tenancy agreement did not have a section for guarantors. MC asserted that the Landlord was aware that she would not reside in the unit.
3. The Tenant provided a text message dated April 11, 2022, in which she told the Landlord that she had a co-signer and goes on to provide the phone number for '*Michelle*'. The Tenant stated, and MC confirmed, that MC has been to the unit once, after Christmas in 2023, and only stayed an hour.

4. The Landlord testified that MC informed him that she was the Tenant's Aunt who would reside in the rental unit partially. The Landlord did not dispute the text exchange provided by the Tenant and stated that despite requesting an amendment of the tenancy agreement for other reasons before signing, MC did not ask to be removed as a Tenant.
5. In ascertaining the real substance of the transactions and activities in this case, in accordance with section 202 of the *Residential Tenancies Act, 2006* ('the Act'), I find that MC is not a Tenant as she did not pay rent for the right to occupy the rental unit despite the contradiction in the tenancy agreement. Apart from the Tenant's text message to the Landlord providing the number of her co-signer, 'Michelle', the Landlord disclosed that he was informed that MC would reside in the unit partially, and both the Tenant and MC stated that MC's role was that of a guarantor so the Tenants would be approved for the rental. I am persuaded, on a balance of probabilities, that from the start of the tenancy there was a clear understanding that MC would not reside in the unit at all.
6. Michelle-Lynne Charlebois is removed as a party to the application.
7. The Tenants claimed that they did not receive the Notice to End your Tenancy Early For Non-payment of Rent (N4) dated August 8, 2023. However, I prefer the evidence of the Landlord, substantiated by the Certificate of Service filed with the application, that three copies of the notice of termination were placed in the Tenants' mailbox.

Determinations:

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment 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. The Tenants are in possession of the rental unit.
3. The lawful rent is \$2,500.00. It is due on the first day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$82.19. This amount is calculated as follows: \$2,500.00 x 12, divided by 365 days.
5. The Tenants have paid \$2,500.00 to the Landlord since the application was filed.

Issues Under Section 82

6. The Tenants raised a number of issues, meritless, as they were permitted to do under section 82 of the Act.

GFI Plug

7. The Tenant testified that the GFI plugs in the unit were not operational from the time the tenancy commenced because they were broken.
8. The Landlord stated that the Tenants wanted to hire their own contractors for repairs so he gave them money to fix the plugs but the electrician they hired caused the lights to dim in the unit. The Tenant stated that the Landlord hired the electrician whom she referred.
9. Section 20 (1) of the Act, provides that 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. The parties in their testimony both agree that an electrician was hired at an unspecified time to fix the plugs, and as the Tenants are unable to demonstrate by any other evidence that a problem lingered, I am not satisfied that the Landlord breached his obligations under the Act.

Sliding

10. The Tenant testified that the sliding was falling off the side of the house in May 2022, and is yet to be fixed. The Tenant presented a picture she sent to the Landlord at that time, which showed a part of the sliding hanging out of place. The Landlord in response stated that the siding did not fall off, and he was able to place it back. This issue does not demonstrate that the Landlord breached his obligations under the Act.

Cupboards

11. The Tenant testified that nine of the cupboards in the unit were falling off their frame in May 2022 and the Landlord was informed but was yet to fix them. The Tenants did not provide any evidence to substantiate this claim.

Heat Pump

12. The Tenant testified that the heat pump is not working properly because it is too small for the unit. The unit was installed by a friend of the Tenants who was not called as a witness to testify that he installed a system in January 2023 that was too small for the rental home.
13. The Landlord installed the heat pump at a cost of approximately \$8,000.00 and when the Tenant complained that it was not sufficient, he hired a company to inspect the system and was told that it was satisfactory. Therefore, I am not satisfied that the Landlord breached his obligations under the Act.

Furnace Filter

14. The Tenant stated that the Landlord has not provided a furnace filter since the start of the tenancy but did not recall asking for one. The Tenants have changed the furnace filter since

they moved into the unit, and without a request to the Landlord to provide one, I do not find the Landlord in breach of their obligations in this circumstance.

Lawnmower

15. The Tenant testified that the Landlord failed to properly maintain a lawnmower which he had given them. The Landlord in response stated that the Tenants receive a discount of \$300.00, which lowered the rent to \$2,500.00, because of an agreement that they would maintain the lawn and the lawnmower was provided as a courtesy.
16. The Landlord's responsibility here is to maintain the lawn and as there was an agreement that the Tenants would do so in exchange for a discount, the Landlord has not breached any portion of the Act.

Septic Tank

17. The Tenant stated that as a result of a neighbour's complaint that the Tenants' use of water in their unit caused sewage to come out of the neighbour's tub, the Tenants were impacted. The Tenants did not inform the Landlord about this problem. Therefore, I am not satisfied that the Landlord breached his obligations under the Act.

Missed Work

18. The Tenant took seven days from work because of visits from HVAC technicians to rectify issues in the unit. There was no heat in the unit for three months from October 2022 to December 24, 2022 when it was resolved. The Landlord was informed of this issue in October 2022. There was also no heat from September 15, 2023 to November 6, 2023 because a breaker needed upgrading.
19. The Landlord stated that the heat on the second and third level of the home was sufficient but there was a problem on the first floor so he asked the Tenants to obtain space heaters while he provided a discount of \$50.00 each month from September 2022 to December 2022 when the heat pump was installed. The Tenant who agreed that the issue was limited to the main floor of the unit, stated that the discount of \$50.00 started in October 2022.
20. The Landlord also testified that he hired an electrician on October 31, 2023, who restored the heat to the main floor on November 6, 2023. The Tenant confirmed that following an email from the Landlord on October 26, 2023 asking if the heat on the main floor was working, she told him that it was not and he hired the electrician who resolved the issue.
21. Based on all the evidence, the Landlord has acted reasonably in his approach to resolving the heating issue on the main floor and the Tenants, who both did not have to take time from work, are not entitled to an abatement of rent.

Cracks in Door Frame

22. The Tenant testified that there was a crack on the frame of the front and back doors in the rental unit and presented a picture from December 2022 when she informed the Landlord who never fixed the problem.
23. The Landlord stated that he gave the Tenants money to fix the door but it appears that they did not. He also purchased a door stopper which he gave to them.
24. The Tenant did not dispute the Landlord's claims that he gave them money to repair the door. Under the Act, it is the Landlord's responsibility to maintain the rental unit but when the parties agree that the Tenants will have it done in exchange for payments, the Tenants cannot complain that the problem is not resolved. As there was no complaint made to the Landlord after December 2022, no rent abatement will be ordered here. The Landlord will, however, be ordered to conduct an inspection of the doors and fix any outstanding issue.

Rodents

25. The Tenant testified that on April 7, 2023, the Landlord hired a pest control company for the unit because of the presence of rats and was advised to fix the holes around the rental unit but he only fixed the holes in front. The Tenant claimed that the pests damaged their couch and presented a picture from December 2023 which she claimed contained a hole. The rats also chewed the refrigerator cord, an act for which the Tenants incurred a cost of \$800.00 for a new compressor.
26. The Landlord testified that the Tenants placed small fishes on the lawn of the rental unit, and cookies in bags, and provided pictures to substantiate the claim. The Landlord hired the pest control company and fixed the foundation as recommended.
27. The Tenant did not state when she first discovered the pests but there is no dispute that the Landlord in April 2023 hired a pest control company to address the issue. There is no record of another complaint to the Landlord after that date. Therefore, I am not satisfied that the Landlord neglected their responsibilities under the Act, or that the pests damaged the couch or refrigerator compressor.

Generator Purchase

28. The Tenants failed to pay the hydro bills for which they were responsible under the terms of the tenancy agreement and refused to transfer the bill to their name as agreed. The Board will not order the Landlord to pay the requested cost of a generator when the hydro was disconnected because of the Tenants failures.

Smoke Alarms

29. The Tenant testified that on December 12, 2022, following her complaint to the city, an inspection of the rental unit was done and the Landlord was informed that the smoke alarm in the unit were expired but the Landlord did not replace them until November 8, 2023.
30. The Landlord did not respond to this issue during the hearing, probably because of the number of issues addressed. A review of the Tenants' disclosure package shows that during an inspection of the unit on December 21, 2022, an inspector from the fire department installed batteries in the smoke alarm on the main floor, second floor stairs and loft stairs.
31. On November 2, 2023, the Tenant made a complaint to the fire department about the lack of smoke alarms in the rental unit. The report shows the Tenant informed them that the Landlord provided a battery for the smoke alarms on the main floor, second floor and loft in March 2023, and that the smoke alarm on the second floor is not hardwired, although it should be.
32. The report goes on to say '*JARVIS advised she will deny entry for the landlord even if proper notice is given to replace the second floor alarm. She requested that a hardwired alarm is dropped off. JARVIS will install and send pictures to LL and FD for confirmation.*'
33. Based on all the evidence, the Tenant was untruthful in her claims that the Landlord did not respond to a complaint made in December 2022 about the smoke alarm. The fire department inspected the smoke alarms, which were not expired, and replaced the batteries at that time. By the Tenant's own admission, the Landlord provided batteries in March 2023, and the Tenant also confirmed that the issue was resolved in November 2023 following their complaint to the city that month.
34. The Tenants are not entitled to any abatement of rent after consideration of all the issues.
35. The rent arrears owing to February 29, 2024 are \$25,000.00.
36. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
37. The Landlord collected a rent deposit of \$2,500.00 from the Tenants 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.
38. Interest on the rent deposit, in the amount of \$114.38 is owing to the Tenants for the period from May 1, 2022 to February 27, 2024.

Relief from Eviction

39. The tenancy commenced on May 1, 2022, and the Tenants reside in the unit with their two children one of whom has special needs. The Tenants, who receive the Canada child benefit of \$1,593.00 monthly, have a business from which they earned zero income in December 2023, and \$10,000.00 in January 2024.

40. The Tenants requested a repayment agreement of \$1,000.00 monthly in arrears and admitted that prior to February 1, 2024, they had not paid the rent for months. The Tenants also asked for an extension of the termination date to enable their son to complete the school year in a class tailored to his needs.
41. The Landlord testified that due to the Tenants' non-payment, he is in debt and has lost a second property he owned and is at risk of losing the rental unit. The Landlord has begged the Tenants to make payments without success, and he provided a document from the city showing he owed property taxes of \$14,264.06, and an email dated January 9, 2024 from his mortgage administrator threatening an escalation if payments were not made following the Landlord's NSF payments.
42. The request for a repayment agreement is denied as I am not satisfied that the Tenants will comply with a conditional order.
43. 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. Although the Tenants' failure to pay the rent has rendered the Landlord impecunious, I find an extra 15 days to give the Tenants time to vacate the rental unit, appropriate.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$27,686.00 if the payment is made on or before March 31, 2024. See Schedule 1 for the calculation of the amount owing.
3. 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 March 31, 2024 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
4. **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 March 31, 2024**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$22,290.75. 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 Tenants. See Schedule 1 for the calculation of the amount owing.

6. The Tenants shall also pay the Landlord compensation of \$82.19 per day for the use of the unit starting February 28, 2024 until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before March 15, 2024, the Tenants will start to owe interest. This will be simple interest calculated from March 16, 2024 at 7.00% annually on the balance outstanding.
8. On or before March 31, 2024, inspect the front and back doors and fix any outstanding issue.
9. 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.
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 April 1, 2024.

March 4, 2024

Date Issued

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Member, Landlord and Tenants 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 Tenants 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	\$30,000.00
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$2,500.00
Total the Tenants must pay to continue the tenancy	\$27,686.00

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

Rent Owing To Hearing Date	\$27,219.13
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$2,500.00
Less the amount of the last month's rent deposit	- \$2,500.00

Less the amount of the interest on the last month's rent deposit	- \$114.38
Total amount owing to the Landlord	\$22,290.75
Plus daily compensation owing for each day of occupation starting February 28, 2024	\$82.19 (per day)