



Order under Section 69 Residential Tenancies Act, 2006

Citation: Camsta (No.1) Limited Partnership c/o DMS Property Management Ltd. v Gallerno,
2024 ONLTB 12954

Date: 2024-02-16

File Number: LTB-L-014650-23

In the matter of: 701, 50 YOUNG ST
HAMILTON ON L8N1V2

Between: Camsta (No.1) Limited Partnership c/o DMS Landlord
Property Management Ltd.
DMS Property Management Ltd.

And

Mathew Gallerno

Tenant

Camsta (No.1) Limited Partnership c/o DMS Property Management Ltd. and DMS Property Management Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Mathew Gallerno (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on February 12, 2024, at 09:00 am.

The Landlord Representative Frank Calcagni and the Tenant attended the hearing.

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 \$863.01. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$28.37. This amount is calculated as follows: $\$863.01 \times 12$, divided by 365 days.

5. The Tenant has paid \$3,126.02 to the Landlord since the application was filed.
6. The alleged rent arrears owing to February 29, 2024 are \$16,371.36.
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 \$860.59 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 \$24.05 is owing to the Tenant for the period from January 1, 2023, to February 12, 2024.

Section 82 Issues

10. The Tenant testified that as early as December 2019, he had detected the ceiling in the rental unit was bubbling due to a leak and accumulation of water. He also testified that he noticed significant issues regarding the state of repair of with the bathroom vanity and walls which he believed included mould. He further testified to sending letters to the property management office on February 13, 2021, March 11, 2021, and June 28, 2021. Images of the letters were entered in evidence.
11. He then testified that these concerns were never responded to, and he sent additional letters on February 2, 2022, and November 13, 2022. Both these letters were entered in evidence. It was his submission, supported by photographs allegedly taken in December 2023, entered in evidence, that the repairs were never completed or effective.
12. He also testified that the Landlord had scheduled to conduct an inspection on February 8, 2024, but he declined due to not feeling well.
13. On cross examination he testified that state of the apartment was due to both the current and previous Landlord failing to address the issues identified.
14. The Tenant then testified the remedy he was seeking was for the Landlord to be ordered to complete the repairs.
15. In Response the Landlord Representative submitted that the Landlord purchased the property on June 19, 2023, and that the first time the Landlord became aware of the maintenance issues was on or after the previous hearing held on September 11, 2023. He also submitted that following that hearing, sometime in September 2023, the Tenant had provided him the same pictures entered in evidence and that he forwarded them to the Landlord. He then submitted that the Landlord, in response, stated that repairs had already been undertaken and provided receipts for said work from February 7, 2023, May 16, 2023, and June 19, 2023. Copies of the associated work orders were entered into evidence. He questioned the validity of the pictures submitted by the Tenant given the work performed by the Landlord, and also suggested that the outstanding maintenance issues, if any, are due to normal wear and tear given the age of the building.

16. It was also his submission that issues raised by the Tenant would be better served by the Tenant filing their own applications with the Board and that it was their understanding that this was the Tenant's intent based on previous correspondence following the September 11, 2023, hearing.
17. Regarding the relief sought, the Landlord Representative submitted that even if the maintenance issues were still outstanding, the Tenant still failed to pay the rent to the Landlord or into the Board following the hearing of September 11, 2023. Furthermore, it was his submission that the Tenant couldn't afford the rent and never intended to pay it.

He supported this submission with an email from January 12, 2024, entered in evidence, in which the Tenant stated the Landlord would never get any money and that he would spend the rent on "video games and weed." He then submitted any conditional order would lead to the Tenant breaching unless they were able to secure financial aid.
18. He also testified that the Landlord and their agents were not available, despite making attempts to do so by telephone.
19. He also submitted that the Landlord could conduct an inspection with 24 hours to verify if the maintenance issues were as claimed and that eviction could be delayed by 90 days to afford the Tenant opportunity to secure financial aid, but the Tenant should be ordered to pay the rent commencing March 1, 2024, and that that payment be subject to section 78, of the Act.
20. Canvassing the Tenant, he didn't deny the comments made in the January 12, 2024, email, testifying he wanted to maintain the tenancy but being of limited financial means as his only source of income was ODSP. He then proposed a payment plan that would have him pay the rent and \$200.00 towards the arrears.

Analysis

21. Section 83(3)(a) of the Act states:

83(3) Without restricting the generality of subsection (1), the Board shall refuse to grant the application where satisfied that,

(a) the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement.

22. Subsection 20(1) of the Act provides that the 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.
23. First based on the above testimony and evidence I am satisfied on the balance of probabilities that the Landlord is in serious breach of their maintenance obligations under section 20(1) of the Act. The pictures the Tenant presented clearly show a significant state

of disrepair within the rental unit, well beyond normal wear and tear. The walls and ceiling in both the bathroom and living room have gaping holes and show signs of water accumulation. If the Landlord has in fact performed repairs as claimed, they were not adequate to address these serious issues.

24. Secondly, although, the Landlord Representative called into question the validity of the pictures I cannot overlook the fact that the Landlord was made aware that the Tenant believed that these issues were still unresolved in September 2023 and despite this, chose to rely solely upon receipts for work orders that predated that hearing while at the same time offering no evidence of any investigation or inspection except for the planned inspection of February 8, 2024, approximately 4 months after the fact.
25. The fact that the Landlord nor their agents were not present to provide testimony or evidence also means there is no direct evidence from the Landlord about the state of the unit or their repairs efforts. Therefore, the best evidence before me is the Tenant's testimony and the Tenant's pictures.
26. Regarding the Landlord Representatives submission that the issues raised would be better served by their own applications, that does not change the fact that under section 83(1)(a) I am obliged to deny termination of the tenancy where I find that the Landlord is in serious breach of their maintenance obligations.
27. In addition, I don't accept the Landlord Representatives suggestion that the Tenant indicating they were going to file their own application following the September 11, 2023, hearing somehow absolved the Landlord of acting as per their obligations. Likewise, while the Landlord is undoubtedly frustrated by the Tenant's lack of rent payment, the Tenant's obligation to perform necessary repairs exists regardless of whether the Tenant is up to date with the rent.
28. While a finding that section 83(1)(a) applies means that the Board cannot issue an eviction order under section 69, it does not excuse the Tenant from their obligation to pay rent or prevent the Board from issuing an order for the arrears under section 87 of the Act. I am satisfied that the rent arrears are as set out above and therefore the Tenant is being ordered to pay the arrears owing up to February 29, 2024.

It is ordered that:

1. The Tenant shall pay to the Landlord \$16,371.36 representing the rent arrears owing until February 29, 2024.
2. The Tenant shall also pay the Landlord \$186.00 representing the filing fee for the application.
3. The total amount the Tenant owes the Landlord is **\$16,557.36**
4. The Landlord is ordered to conduct an inspection and complete any repairs necessary on or before March 31, 2024

5. If the Tenant does not pay the Landlord the full amount owing on or before April 30, 2024, the Tenant will start to owe interest. This will be simple interest calculated from March 1, 2024, at 7.00% annually on the balance outstanding.

February 20, 2024

Date Issued

Kelly Delaney

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 November 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	\$10,172.59
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,126.02
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	\$7,232.57

B.

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

Rent Owing To Hearing Date	\$10,172.59
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,126.02
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	- \$860.59
Less the amount of the interest on the last month's rent deposit	- \$24.05
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	\$6,347.93
Plus daily compensation owing for each day of occupation starting February 13, 2024	\$28.37 (per day)

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