



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

Citation: Liverance v De vos, 2024 ONLTB 9604

Date: 2024-02-08

File Number: LTB-L-053777-22

In the matter of: Basement, 7A LLOYD GEORGE AVE ETOBICOKE
ON M8W3W3

Between: Christine Liverance
Jacob Abrahams Landlords

And

Benjamin De Vos
Annesu De Vos Tenants

Christine Liverance and Jacob Abrahams (the 'Landlords') applied for an order to terminate the tenancy and evict Benjamin De Vos and Annesu De Vos (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

The Landlords also claimed charges related to NSF cheques.

This application was heard by videoconference on November 29, 2023.

The Landlords legal representative T. Sandukhchyan and the Tenants attended the hearing.

Determinations

Preliminary Issues

Section 82 issues

1. At the beginning of the hearing, the Landlord's representative submitted that the Tenants should not be granted the opportunity to raise s.82 issues, as they were previously addressed in LTB-L-001423-23 (L2/N12 application). A. De Vos testified that she raised s.82 issues in her appeal to Divisional court related to LTB-L-001423-23, but the Tenants

s.82 issues did not seem to have been addressed in the previous order. I was unaware of whether those issues were properly the subject to the Divisional Court appeal proceedings. Nonetheless, it was unnecessary for me to make further inquiries and I refused to hear the s.82 issues as a result of the Tenant's failure to comply with the Board's directions.

2. On April 20, 2023 an interim order was issued ordering the Tenants to file their s.82 issues no later than April 30, 2023. The interim order also requested that the Tenants at minimum file particulars and details of the facts alleged, and remedies sought. The Tenants failed to do so, and the Landlords had no knowledge of the alleged facts at the time of the hearing. As such, the application proceeded on the L1 only and the Tenants section 82 issues were not considered.

Lawful Rent

1. The Tenancy agreement was entered into on January 2020. It was undisputed that the Landlords served an N2 Notice of Rent Increase on the Tenants on September 1st 2022 for an increase that would take effect on January 1, 2023 from \$1,593.90 to \$2,500.00 per month.
2. The Tenants assert that the Landlord's rent increase was unlawful and that the application must be dismissed for that reason. They assert the rent increase in this case must be pursuant to Ontario's rent increase guideline which sets out the maximum a Landlord can increase most tenants' rent during a year without the approval of the Landlord and Tenant Board. They say the Landlord increased the rent more than the guideline.
3. The Landlord increased the rent by \$1,000 in excess of the guideline for rent increase. The Tenants are correct that the guideline applies to most rental units, but it does not apply to a rental unit if no part of the unit was occupied for residential purposes on or before November 15, 2018 and the tenancy agreement was entered into after that date. The Act carves out an exemption from the application of the guideline and the Landlord may increase the rent by any amount. However, the Landlord bears the onus of proving the exemption applies. The Act provides as follows:

Exemptions from rules relating to rent

6.1 (1) *In this section,*

“addition” means, with respect to a mobile home park or land lease community, an expansion beyond the boundaries of the mobile home park or land lease community; (“rajout”)

“commencement date” means the day section 1 of Schedule 36 to the Restoring Trust, Transparency and Accountability Act, 2018 comes into force.

Buildings, etc., not occupied on or before November 15, 2018

(2) Sections 120, 121, 122, 126, 127, 129, 131, 132, 133, 165 and 167 do not apply on and after the commencement date with respect to a rental unit if the requirements set out in one of the following paragraphs are met:

- 1. The rental unit is located in a building, mobile home park or land lease community and no part of the building, mobile home park or land lease community was occupied for residential purposes on or before November 15, 2018.*
- 2. The rental unit is entirely located in an addition to a building, mobile home park or land lease community and no part of the addition was occupied for residential purposes on or before November 15, 2018.*

Rental units in detached houses, semi-detached houses or row houses

(3) Sections 120, 121, 122, 126, 127, 129, 131, 132 and 133 do not apply on and after the commencement date with respect to a rental unit if all of the following requirements are met:

- 1. The rental unit is located in a detached house, semi-detached house or row house which, on or at any time before November 15, 2018, contained not more than two residential units.*
- 2. The rental unit is a residential unit that meets all of the following requirements:*
 - i. The unit has its own bathroom and kitchen facilities.*
 - ii.*

The unit has one or more exterior or interior entrances.

iii. At each entrance, the unit has a door which is equipped so that it can be secured from the inside of the unit.

iv. At least one door described in subparagraph iii is capable of being locked from the outside of the unit.

3. The rental unit became a residential unit described in paragraph 2 after November 15, 2018.

4. One or both of the following circumstances apply:

i. At the time the rental unit was first occupied as a residential unit described in paragraph 2, the owner or one of the owners, as applicable, lived in another residential unit in the detached house, semi-detached house or row house.

ii. *The rental unit is located in a part of the detached house, semi-detached house or row house which was unfinished space immediately before the rental unit became a residential unit described in paragraph 2.*

Non-application of exemption under subs. (2) or (3)

(4) Subject to subsection (5), the exemption under subsection (2) or (3) does not apply with respect to a rental unit that is subject to a tenancy in respect of which a tenancy agreement was entered into on or before November 15, 2018.

Application of subs. (4)

(5) Subsection (4) applies only with respect to the tenancy described in that subsection and does not apply with respect to any subsequent tenancy. 2018.

Burden of proof

(6) For greater certainty, in an application to the Board in which the application of subsection (2) or (3) is at issue, the onus is on the landlord to prove that the subsection applies.

4. In response, to the Tenants' assertions, the Landlord says that the rental unit is exempt under subsection 6.1(3) of the Act as the rental unit was unfinished space immediately before the rental unit became a residential unit and was never previously occupied. In order to assess the lawfulness of the rent, I need to make a determination on whether the rental unit was previously occupied (before November 15, 2018) and whether the guideline applies to the unit.
5. A. De Vos testified that the real estate listing showed the basement as finished and says it must previously have been occupied. The Tenant did not submit a copy of the real estate listing of the property. Instead, the Tenant filed pictures of the basement unit, which she asserts are from the MLS sale listing. The photos provided by the Tenant did not have a date of when they were taken or who took the photos. The Photos did not include an MLS number and or provide the contact information of the real estate agent that may have taken the photos. Overall, the photos did not indicate to be any form of business record to prove them as an MLS listing. The Landlord denied that the photos were attached to the MLS listing of the apartment. J.A. further testified that the MLS listing did not state the basement was a basement apartment as suggested by the Tenant.
6. It was undisputed that the Landlords purchased the rental home on October 30, 2019. J.A. testified that shortly after the purchase, between October 2019 to January 2020 the Landlords completed extensive renovations to the basement that required permits to instal a kitchen and fire exit door. A.J. testified that all plumbing and electrical work was also completed. That at the time of purchase the basement only had a sink and a shelf. J.A.

testified that they believed that previous owners used the basement as storage space and denied that the unit was previously occupied.

7. Based on the evidence, I find the Landlord has satisfied the burden of proof. I accept the unit was unfinished and find the rental unit was not occupied for residential purposes on or before November 15, 2018. I find the Landlord's testimony credible in that the unit was first used for residential purposes after November 15, 2018 after extensive renovations requiring permits were done to the unit. I am satisfied that the Landlord served an N2 Notice of Rent increase as required by the Act and find the lawful rent to be \$2,500.00 per month.

Determinations on L1

8. The Tenants denied the arrears owing and asserted that all arrears have been paid in full. The Tenants did not submit any documentary evidence to prove that payments towards arrears were paid. The Tenants requested a couple of weeks to file proof of payments, however, the Tenants have had 27 days to file any documentary evidence they wished to rely on and failed to do so. Instead, the Tenants only filed photos related to the unit. I advised the Tenant that I could set the matter down for 20 minutes to allow her the opportunity to file her proof of payments and she declined. The Tenants were required to be prepared and ready to proceed with the hearing. The request to file proof of payment at a later time was denied.
9. In evidence in chief, A. De Vos first stated that all arrears were paid in full and later provided contradictory evidence testifying that the arrears for February to April 2023 were never paid because she was not aware of what the lawful rent was. The Landlord's representative submitted that the Tenants failed to pay what they believed to be the lawful rent.
10. On a balance of probabilities, I accept the Landlord's testimony that there are arrears of rent. The Tenants have denied all of the arrears owing but have failed to prove payments made. A. De Vos further confirmed that the N2 notice was received by the Landlord but chose to ignore the notice until the LTB hearing was held. The Landlords 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.
11. The Tenants were in possession of the rental unit on the date the application was filed.
12. The Tenants vacated the rental unit on July 27, 2023. Rent arrears are calculated up to the date the Tenants vacated the unit.
13. The lawful rent is \$2,500.00. It was due on the 1st day of each month.
14. The Tenants have paid \$7,969.50 to the Landlords since the application was filed.

15. After the application was filed, the Tenants received a credit of \$2,500.00 on January 1, 2023 as one months compensation related to an L2/N12 application, LTB-L-001423.
16. The rent arrears owing to July 27, 2023 are \$11,531.33.
17. The Landlords are entitled to \$40.00 to reimburse the Landlords for administration charges as a result of 2 cheques given by or on behalf of the Tenants which were returned NSF.
18. The Landlords incurred costs of \$186.00 for filing the application and are entitled to reimbursement of those costs.
19. The Landlords collected a rent deposit of \$1,575.00 from the Tenants and this deposit is still being held by the Landlords. The rent deposit is applied to the arrears of rent because the tenancy terminated.
20. Interest on the rent deposit, in the amount of \$79.20 is owing to the Tenants for the period from January 15, 2020 to July 27, 2023.

It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated as of July 27, 2023, the date the Tenants moved out of the rental unit.
2. The Tenants shall pay to the Landlords \$10,103.13. This amount includes rent arrears owing up to the date the Tenants moved out of the rental unit and the cost of filing the application and unpaid NSF charges. The rent deposit and interest the Landlords owes on the rent deposit is deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
3. If the Tenants does not pay the Landlords the full amount owing on or before February 26, 2024, the Tenants will start to owe interest. This will be simple interest calculated from February 20, 2024 at 7.00% annually on the balance outstanding.

February 15, 2024

Date Issued

Mayra Sawicki

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 Tenants must pay as the tenancy is terminated

Rent Owing To Move Out Date	\$23,000.83
Application Filing Fee	\$186.00
NSF Charges	\$40.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$7,969.50
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00

Less the amount of the last month's rent deposit	- \$1,575.00
Less the amount of the interest on the last month's rent deposit	- \$79.20
Less the amount the Landlords owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$2,500.00
Total amount owing to the Landlords	\$10,103.13