



Order under Section 69 Residential Tenancies Act, 2006

Citation: Boileau v Séguin, 2024 ONLTB 1281

Date: 2024-01-25

File Number: LTB-L-051338-22

In the matter of: 1, 2790 ST. JOSEPH BLVD Ottawa
ON K1C1G5

Between: Bryan Boileau Landlord

And

Julie Séguin Tenants Jon Carbonette

Bryan Boileau (the 'Landlord') applied for an order to terminate the tenancy and evict Julie Séguin and Jon Carbonette (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on November 23, 2023.

The Landlord, the Landlord's Legal Representative Claire Dutrisac and the Tenant Julie Seguin attended the hearing.

Preliminary Issue:

1. The Tenant requested to raise maintenance issues under section 82 of the *Residential Tenancies Act, 2006* (the 'Act') and reduce the rent owing via a rent abatement.
2. The Tenant did not notify the Landlord that she was intending to raise section 82 issues prior to the hearing. The Tenant did not submit her evidence regarding maintenance issues to the Landlord or to the Board until the day of the hearing. The Tenant did not provide a reasonable explanation for failing to provide evidence of her maintenance issues to the Landlord and the Board at least seven days prior to the hearing, as required by Rule 19.4 of the Board's Rules of Procedure.

3. Since the Tenant did not comply with the Board's Rule 19.4 relating to disclosure, I declined to consider the Tenant's maintenance issues under section 82 per Rule 19.5. However, I still heard the Tenant's testimony relating to serious, ongoing issues in the rental unit pursuant to section 83(3)(a) of the Act.

Determinations:

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 \$1,750.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$57.53. This amount is calculated as follows: \$1,750.00 x 12, divided by 365 days.
5. The Tenants have not made any payments since the application was filed.
6. The rent arrears owing to November 30, 2023 are \$31,500.00.
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 \$1,750.00 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.
9. Interest on the rent deposit, in the amount of \$62.83 is owing to the Tenants for the period from December 10, 2021 to November 23, 2023.

Relief from eviction

10. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenants and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
11. Section 83(3)(a) of the Act requires the Board to refuse to grant a landlord's application for eviction where the landlord is in serious breach of the landlord's responsibilities or any material covenant in the tenancy agreement. As such, I considered the Tenants' submissions regarding ongoing maintenance issues in determining whether to deny the eviction.

12. In determining whether the issues the Tenant raised are serious enough to warrant mandatory relief from eviction, I rely on the Board's Interpretation Guideline 7: Relief from Eviction, which states:

A health or safety concern due to lack of repair may be serious enough to justify refusal. Conditions which deprive the tenant of the full use of the premises will usually be serious, particularly if it affects the kitchen, bathroom or sleeping areas.

In cases related to the obligation to repair, the tenant's conduct may also be relevant. For example, if the tenant has never before complained to the landlord about a long-standing repair problem, they may have shown they did not consider it to be serious. Further, if the landlord was not aware or could not reasonably have been expected to be aware of the problem, the Member may find that the landlord is not in serious breach. Further, the tenant should not have contributed to the problem, such as by obstructing the landlord's repair efforts.

13. The Tenant raised the following issues:

1. No heat;
2. A 1-centimeter gap in the front door which lets in snow and insects;
3. The electrical circuit overloads, resulting in periods of no electricity; and
4. Mould in the kitchen.

14. For the following reasons, I am not satisfied that any of the issues warrant mandatory relief from eviction under section 83(3)(a) of the Act.

15. The Tenant testified that the electrical circuit only overloads in the kitchen, where there are high-usage appliances. Based on the Tenant's own admission, the Tenant can turn the electricity back on shortly after the circuit overloads by contacting the basement tenant to switch the breaker. As such, I do not consider this issue to be a serious, ongoing breach of the Landlord's responsibilities under the Act.

16. The Tenant testified that there is a 1-centimeter gap in the front door of the rental unit which lets in snow and insects. I find that a small gap in the door does not cause a health or safety concern and does not deprive the Tenant of the full use of the premises. Furthermore, the Tenant did not lead evidence showing that she notified the Landlord of the issue. As such, I do not consider this issue to be a serious, ongoing breach of the Landlord's responsibilities under the Act.

17. The Tenant testified that there is mould in the kitchen cupboards, with the wood being a dark brown or even black colour. The Tenant did not provide any evidence showing that she notified the Landlord about the mould issue. Even though the mould may affect the kitchen, which is an important part of the rental unit, the fact that the Tenant did not notify the Landlord about this issue leads me to believe that she did not consider it to be serious.

As such, I do not consider this issue to be a serious, ongoing breach of the Landlord's responsibilities under the Act.

Heating

18. The Tenant testified that the heating does not work in the rental unit but did not provide temperature readings showing that the temperature in the rental unit was lower than required. The Landlord testified that the heating elements were working in the winter of 2021 – 2022. The burden of proof is on the Tenant to show, on a balance of probabilities, that the heating issue exists. The Tenant has not led sufficient evidence for me to make a finding, on a balance of probabilities, that the Landlord has failed to provide adequate heating in the rental unit.
19. The parties agree that the Tenant sent the Landlord an email on June 12, 2022 regarding the heating. Neither party remembers whether the Tenant complained about the heat after June 12, 2022 or not. Lack of heat can be a serious issue and may certainly deprive a tenant of the full use and enjoyment of a rental unit. However, there is no evidence before me that the Tenant complained about this issue to the Landlord after June 12, 2022, which is now over a year and a half prior to the hearing date.
20. Given the lack of evidence on this issue, and the fact that the Tenant did not complain about it to the Landlord since June 2022, I do not consider this issue to be a serious, ongoing breach of the Landlord's responsibilities under the Act.
21. For all the above reasons, I dismiss the Tenant's request for mandatory relief from eviction under section 83(3)(a) of the Act. I now turn my mind to whether it is appropriate to delay eviction or impose a payment plan. For the following reasons, I find that relief from eviction is not appropriate in the circumstances.
22. The Tenants have not paid any rent since the application was filed on September 8, 2022, and did not provide any valid reason for the non-payment. According to the Tenant, she works 7:00 AM – midnight every day and is experiencing mental distress. No other circumstances were presented by the Tenant in requesting a delay of the eviction.
23. Since the Tenants have not made any payments for over one year of the tenancy without providing any reason, I find that a payment plan is an unreasonable remedy. I also find no reason to delay the eviction. The Tenants have been aware that the Landlord intends to terminate their tenancy since receiving the N4 notice in July 2022. The Tenants have had over a year to find alternative accommodations. The Landlord is significantly prejudiced by the large arrears and is experiencing financial difficulties.

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:**
 - \$35,186.00 if the payment is made on or before January 31, 2024. See Schedule 1 for the calculation of the amount owing.

OR

 - \$36,936.00 if the payment is made on or before February 5, 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 February 5, 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 February 5, 2024.**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$29,446.36. 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 \$57.53 per day for the use of the unit starting November 24, 2023 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 February 5, 2024, the Tenants will start to owe interest. This will be simple interest calculated from February 6, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before February 5, 2024, then starting February 6, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. 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 February 6, 2024.

January 25, 2024

Date Issued

Kate Sinipostolova

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 August 6, 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 January 31, 2024

Rent Owing to January 31, 2024	\$35,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$35,186.00

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before February 5, 2024

Rent Owing to February 29, 2024	\$36,750.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$36,936.00

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

Rent Owing to Hearing Date	\$31,073.19
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Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
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	- \$1,750.00
Less the amount of the interest on the last month's rent deposit	- \$62.83
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$0.00
Total amount owing to the Landlord	\$29,446.36
Plus daily compensation owing for each day of occupation starting November 24, 2023	\$57.53 (per day)