



Order under Section 69 Residential Tenancies Act, 2006

Citation: Batra v Choudhary, 2023 ONLTB 74824

Date: 2023-12-15

File Number: LTB-L-038720-23

In the matter of: 106 FOOTBRIDGE CRES
BRAMPTON ON L6R0T9

Between: Jitender Batra and Sheetal Ahuja Landlord

And

Anjul Choudhary and Sushil Bhakar Tenant

Jitender Batra and Sheetal Ahuja (collectively referred to as the 'Landlord') applied for an order to terminate the tenancy and evict Anjul Choudhary and Sushil Bhakar (collectively referred to as the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on September 28, 2023.

The Landlord and their legal representative, Mohit Popli, and the Tenant attended the hearing.

Determinations:

Preliminary Issues – Validity of Notice of Termination ('N4')

1. At the hearing two preliminary issues arose with respect to the validity of the N4. The first relates to the amounts claimed on the N4 and the second relates to the lawful rent for the rental unit.
2. The general requirements for a valid notice of termination are set out in section 43 of the Residential Tenancies Act, 2006 (the 'Act'). One requirement is that the notice "shall set out the reasons and details respecting the termination". The specific requirements for an N4 are set out in section 59 of the Act, one of which is to "set out the amount of rent due and shall specify that the tenant may avoid the termination of the tenancy by paying, on or before the termination date specified in the notice, the rent due as set out in the notice and any additional rent that has become due under the tenancy agreement as at the date of payment by the tenant."
3. In this case, the first page of the N4 asserts that the Tenant owes \$4,200.00 and that they can avoid termination of the tenancy by paying this amount by March 31, 2023. The second page of the N4 explains this calculation, asserting that the rent charged for the

period February 1, 2023, to March 31, 2023, is \$4,200, that the Tenants paid \$0.00 and that the total rent owing is \$4,200.00.

4. At the hearing, the Tenant asserted that the monthly rent is \$2,050.00 not \$2,100.00. With respect to this claim, the Landlord's uncontested evidence was that the rent was \$2,050.00 from September 1, 2017, to May 31, 2022, but that the parties entered into a new verbal agreement for the same rental unit effective June 1, 2022 with a rent of \$2,100.00. The Tenant's uncontested evidence was that there was no notice of rent increase ('NORI') and the Tenant argued that this was an illegal rent increase. The Landlord argued that there was no illegal rent increase because the parties agreed to it and because the Tenant did not object before the Landlord filed the application or before the hearing date.

What is the lawful rent?

5. The increase in rent from \$2,050.00 to \$2,100.00 is an increase of 2.45%, which is greater than the 1.20% that was permitted in 2022.
6. The Landlord's argument that the parties agreed to this above-guideline rent increase is rejected, because the Court of Appeal in *Honsberger v. Grant Lake Forest Resources Ltd.*, 2019 ONCA 44 (CanLII) found that parties cannot contract out of the rent rules in the Act by entering into a new tenancy agreement for the same rental unit.
7. Still, where no NORI was given, the rent increase may still be lawful under subsection 136(2) of the Act, which provides:

An increase in rent shall be deemed to be lawful unless an application has been made within one year after the date the increase was first charged, and the lawfulness of the rent increase is in issue in the application.

8. My conclusion is that section 136 of the Act does not assist the Landlord because subsection 136(2) of the Act permits tenants to raise the lawfulness of the rent increase on a landlord's application and because the Tenant filed a T1 application on May 31, 2023 challenging the increase.
9. In this case, rent of \$2,100.00 was first charged on June 1, 2022, and the Tenant filed their T1 application on May 31, 2023, which was within the 1-year limitation period. In the alternative, the Landlord filed this application in May of 2023 which is also within the 1-year limitation period.
10. Since there was no dispute that the Landlord increased the rent beyond the guideline, I find that this was an illegal rent increase and that the rent remains \$2,050.00. The N4 is therefore invalid because it does not state the "amount of rent due".

11. As the Landlord's notice was invalid, I gave the Landlord the option to proceed for arrears only with no possibility of termination of the tenancy for this money, or to begin the process again. The Landlord chose to seek an award for arrears only.
12. The parties agree that the rent arrears and costs owing to September 30, 2023, is \$16,050.00. An order for this amount shall issue.

SECTION 82 ISSUES

13. Section 82 of the *Residential Tenancies Act, 2006* (the 'Act') states, in part:

82 (1) At a hearing of an application by a landlord under section 69 for an order terminating a tenancy and evicting a tenant based on a notice of termination under section 59, the Board shall permit the tenant to raise any issue that could be the subject of an application made by the tenant under this Act ...

14. At the hearing the Tenant raised the following maintenance issues in relation to section 82 and section 20 of the Act. Some of the issues raised are barred by operation of the oneyear limitation period in subs.29(2) of the Act. Several of the issues were not set out with sufficient particularity for the Landlord to know the case to be met. The Tenant is not prejudiced. They are not facing eviction. The Tenant may file applications with respect to the issues that are not barred by subs. 29(2) of the Act.
15. The only issues I will be considering as they are ongoing as of the date of the hearing and have been properly disclosed to the Landlord are the following:
 - Issues with Kitchen Appliance (fridge);
 - Issues with Driveway and Outdoor Stairs;
 - Windows and Doors Leaking;
 - Issues with Carpet in the Unit; • Lawn Care and Snow Removal; • Rent receipts.
16. The Tenant wished to raise further issues but did not disclose on his form titled "issues a Tenant intends to raise at a rent arrears hearing" any details with respect to when the issue occurred, if he notified the Landlord, if it was resolved or any remedies requested. Given that the Tenant did not follow the requirement that he was supposed to submit a complete list of the issues and remedies sought, I will only be deciding on the properly served issues listed above.
17. Section 20 (1) of the Act sets out a Landlord's maintenance obligations; it states:

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.

18. In *Onyskiw v. CJM Property Management*, 2016 ONCA 477 (*Onyskiw*) (CANLII) the Court of Appeal for Ontario determined that a contextual approach should be adopted when considering a landlord's potential breach of subsection 20 (1). A breach will not be found if the Landlord's response to a maintenance issue was reasonable in the circumstances.

Limitation period

19. In light of the one-year limitation period in s.29(2) of the Act, I can only make a determination that the Landlord has failed to meet his maintenance obligations as required by the Act during the one year period from the date the Tenant raised his issues on September 28, 2023 which was the date of this hearing.
20. In practical terms, in the present application the Board may only look at any breach of the Landlord's duty to maintain or repair the unit that may have occurred after September 28, 2022—that is, one calendar year prior to hearing this application. Similarly, the Board can only offer a remedy with respect to any breach that occurred within that period.

Issues with Kitchen Appliance (fridge)

21. The Tenant says that the fridge started to have issues around September 15, 2017, when the Tenant moved into the unit.
22. The Landlord says that they did not become aware of the issues until January 2023, when the Tenant sent a letter to the Landlord regarding the issues.
23. There was evidence submitted at the hearing that show correspondence between the parties on September 18, 2021. The best evidence before me with respect to when the Landlord became aware of these issues are these text messages. Therefore, I find that for all intents and purposes the Landlord effectively became aware effective September 18, 2021.
24. There is no dispute that a handyman came to the unit on September 18, 2021, and inspected the fridge. The issue persisted after the inspection and the Tenant followed up with the Landlord via text on November 30, 2022, January 1, 2023, and sometime in April of 2023. After the inspection on September 18, 2021, the Landlord did not take any further action.
25. The Tenant testified that the fridge cannot maintain the temperature and constantly creates an ice build up which in turn, the Tenant has to remove the food from the fridge every few days so the temperature will come back down. There was a photo submitted as evidence by the Tenant showing ice build up in the fridge.

26. The Landlord states that his handyman informed him that the Tenant had to defrost the fridge as the temperature was set too high and then the issue should resolve. The Landlord did not hear from the Tenant again about this issue until November 30, 2022 and admitted that he never addressed the issue of the fridge after he was informed again on November 30, 2022. The Landlord asserts that he believes the Tenant only brought this issue up again as he was upset that the Landlord was selling the property.
27. The Tenant did not lead sufficient evidence to support their claim that the fridge was continuing not to work after the September 18, 2021, incident. I also doubt that the Tenant would live with a fridge that was not working properly for over two years without saying something to their Landlord. The Tenant did not provide any reason as to why he did not inform the Landlord of the issue for over two years.
28. Furthermore, on any application before the Board, the person who alleges any particular incident or event occurred has the burden of leading sufficient evidence to establish that it is more likely than not that their version of events is true. In this case that burden falls on the Tenant. For the reasons that follow, the Board finds that the Tenant has led insufficient evidence to establish that there are any issues with the fridge that would constitute a breach of the Landlord's maintenance obligations under the Act after the September 18, 2021, complaint.

Issues with Driveway and Outdoor Stairs

29. The Tenant testified that the driveway has potholes at the end of the driveway and that the stairs leading to the front door are chipped and are in need of repair. The Tenant states that due to these disrepairs, the Tenant has trouble removing ice as a result and that possible injuries may occur. The Tenant testified that this issue has been ongoing since 2017 and informed that he informed the Landlord sometime in 2018 but there was no evidence to support that. The only evidence before me is that the Tenant informed the Landlord on November 30, 2022 via text message. The issue is persisting.
30. The Tenant submitted photos of the driveway and stairs. It is hard to tell from the photos as there is rain pooled in the potholes, but it is apparent that there are issues with the end of the driveway as water would not pool if there was proper slopping. The stairs are also chipped and appear to be in need of repair.
31. The Landlord does not dispute that these issues exist, or that they did not address these issues. Based on the uncontradicted evidence before me, I find that the Tenant informed the Landlord on November 30, 2022 of the issue and the Tenant is entitled to an abatement of rent for the period of September 28, 2022 to now. The Tenant has asked for these two issues to be resolved and abatement of rent in the amount of \$50.00 per month.

Windows and Doors

32. The Tenant testified that the doors and windows in the entire house are leaking air from outside which causes a fluctuation in temperatures in the house. The Tenant informed the Landlord on November 30, 2022. The Tenant testified that he contacted the city of Brampton and an inspector had emailed the Landlord to fix some issues within the master bedroom relating to the room not having adequate heat. The city inspector emailed the Landlord on March 1, 2023, requiring the Landlord to rectify the situation by March 2, 2023. The Landlord effectively rectified the situation on March 5, 2023, as described below.
33. The Landlord dropped off a space heater to the Tenant that day and informed the city inspector that he would have his contractor come in to look at the issue.
34. The Tenant further testified that the Landlord had someone come in and fix the caulking around the window in the master bedroom in attempt to rectify the situation shortly after the city had required the Landlord to fix the problem. The Tenant testified that this issue in the master bedroom was resolved by the Landlord, but no other windows or doors were repaired.
35. On any application before the Board, the person who alleges any particular incident or event occurred has the burden of leading sufficient evidence to establish that it is more likely than not that their version of events is true. In this case that burden falls on the Tenant. For the reasons that follow, the Board finds that the Tenant has led insufficient evidence to establish that there are any issues with the windows or doors.
36. Furthermore, the Tenant testified that he informed the Landlord's handyman about the other issues with the windows and doors when he was in to fix the master bedroom window but led insufficient evidence to prove this.
37. The Landlord submitted an invoice from a renovation company which details that the handyman did caulking on all the windows and replaced weather stripping on the main door and the door that leads to the garage. This was dated for March 5, 2023. I prefer the Landlord's evidence on this issue. The invoice has an amount of \$550.00 that was to be paid by the Landlord to the handyman and details the work that was completed.
38. The Tenant has the obligation of proving that the Landlord is in breach of the Act. Where there is no breach, the Tenant is not entitled to remedy. Based on the evidence before me, I am not satisfied that there is any issue with any of the windows or doors or that the Tenant informed the Landlord of any further issues with them. Although I do not find that the Landlord is in breach on this application it does not mean that the issue is resolved. I encourage the Landlord to do their own due diligence with respect to this issue. The portion of the claim regarding anything after March 5, 2023 portion of the claim is dismissed.

39. With respect to the amount of time it had taken the Landlord to rectify the issue which was between November 30, 2022 and March 5, 2023. I do not find it reasonable that the Landlord took this much time to address the situation. It appears that the Landlord only started taking the issue seriously once the Tenant complained to the City of Brampton. I will be ordering an abatement for the period that the issue was not addressed being December 1, 2022 until March 1, 2023.

Issues with Carpet in the Unit

40. The Tenant testified that there is a stain on the carpet and the carpet is old. To this day, the Landlord has still not cleaned the stain or cleaned the carpet. The Tenant notified the Landlord of the issue until November 30, 2022, via text message. In return, the Landlord threatened to raise the rent \$800.00.

41. The Tenant testified that this issue is their main concern as their son has severe allergies and having a dirty carpet affects his son's allergies. The Landlord has still not addressed the issue raised by the Landlord. The Tenant submitted a photo of the stain on the carpet as evidence to support their claim.

42. The Tenant however did not lead sufficient evidence on the state of the carpet as it relates to the age and condition and how this would affect the Tenants' son and his allergies. Given that the Tenant has the obligation of proving that the Landlord is in breach of the Act. Where there is no breach, the Tenant is not entitled to remedy.

43. However, with respect to the stain in the carpet, the Landlord has an obligation under subsection 20(1) of the Act to complete any required repair regardless of how the damage occurred. If the Landlord believes that the Tenant should be held responsible for the repair costs the Landlord may file their own application with the Board.

44. There is no dispute that there is a stain on the carpet. Accordingly, based on the evidence before me, including the Tenant's photographs, I cannot find that there is any apparent damage to the carpet that goes beyond normal wear and tear.

45. In addition, the Tenant did not submit any medical evidence to establish that the condition of the bedroom carpet is negatively affecting the Tenant's health in any way.

46. Therefore, I find that the Tenant did not present sufficient evidence to prove that the Landlord has failed to maintain the carpet in a good state of repair, fit for habitation or that it violates health and safety standards.

47. This claim is dismissed.

Lawn Care and Snow Removal

48. The Tenant raised an issue relating to the lawn care and snow removal of the property in which he states that the Landlord is responsible for this. The Landlord did not dispute that he required the Tenant to be responsible for this.
49. Although the tenancy agreement states that the Tenants are responsible to maintain the lawn, section 3 of the Act specifies that the Act applies despite any agreement or waiver to the contrary.
50. Consequently, by requiring a tenant to maintain the lawn and remove the snow a landlord is essentially transferring its responsibility to maintain a unit in a good state of repair including compliance with housing and maintenance standards to a tenant. This contravenes section 3 of the Act.
51. In *Montgomery v. Van*, 2009 ONCA 808 (CanLII), the Court of Appeal found that a landlord cannot fulfill its statutory duty by requiring tenants to perform prescribed maintenance unless there is a severable contractual obligation. This means that if there is an agreement that the tenant maintains the lawn, there must be consideration given to the tenant for this responsibility. In this case, there was no evidence of any consideration provided to the Tenant for maintaining the lawn such as a rent discount or other incentives.
52. I find that the Tenant did ask the Landlords to provide snow removal and lawn maintenance. The Landlord concedes that the Tenants informed him that this was the Landlords responsibility. It does not make sense to me that the Tenants would bring up this obligation with the Landlords without requesting that the Landlords fulfill its obligation.
53. For the above reasons, I find that the Landlords failed to meet their obligations under subsection 20(1) of the Act.
54. The Tenant is asking for the Board to issue an order requiring the Landlord to maintain the property and an abatement of \$150.00 per month that he was responsible for the maintenance.

CALCULATION OF ABATEMENT

55. Section 82(3) of the Act states that if a Tenant raises an issue under subsection (1) the Board may make any order in respect of the issue that it could have made had the tenant made an application under this Act.

56. Section 29(2) of the Act sets out a one-year time limitation with respect to any alleged conduct giving rise to the application. As already stated, I find that the Tenant is only entitled to an abatement for the period of September 28, 2022 to September 28, 2023, the day of this hearing, as such an abatement shall be awarded for that time period.
57. The Tenant requested different an abatement amounts for all the issues raised in this application.
58. An abatement of rent is a contractual remedy on the principle that if you are paying 100% of the rent then you should be getting 100% of what you are paying for and if you are not getting that, then a tenant should be entitled to abatement equal to the difference in value. In other words, an abatement of rent can be viewed as compensation to the Tenant for inconvenience and loss of use of the rental unit.
59. In considering the evidence before me, as well as the impact it had on the Tenant, I find that a 10% rent abatement for the months of September 2022, to September 2023 for all issues I have granted above. This is a collective amount for the entire period of the 1 year that most of these issues persisted. This amounts to \$2,460.00. I say this because the Tenant did not lose full function to all the issues described.
60. $\$2,050.00 \times 0.10 = \205.00 per month for 12 months = \$2,460.00- an order for this amount shall issue.
61. In addition to a rent abatement, an order will issue that the Landlord shall complete all necessary repairs, failing which the Tenant may deduct an ongoing abatement from the monthly rent until the repairs are completed.

Rent Receipts

62. The Tenant alleges that the Landlord did not provide rental receipts for the entire period of the Tenancy. The Landlord did not dispute this. An order will issue to address this issue.
63. I will note, and as explained to the Tenant at the hearing, that just because a landlord does not provide rent receipts, it does not afford the Tenant the right to withhold rent.

It is ordered that:

1. On or before January 15, 2024, the Landlord shall provide the Tenant with proper rent receipts, setting out each and every rent amount received by the Landlord over the entire tenancy.
2. The Landlord shall pay a rent abatement to the Tenant in the amount of \$2,460.00, which represents 10% of the monthly rent for the period September 2022 to September 2023.

3. The total the Landlord owes the Tenant is \$2,460.00, this amount shall be deducted from the total arrears owed.
4. The Tenant shall pay to the Landlord \$13,791.00 (less any payments made by the Tenant). This amount includes the undisputed rent owing to September 30, 2023 in the amount of \$16,050, and the cost of filing the application in the amount of \$201.00, less the amount the Landlord owes the Tenant pursuant to paragraph 3 above.
5. If the Tenant does not pay the Landlord the full amount owing on or before January 1, 2024, the Tenant will start to owe interest. This will be simple interest calculated from January 2, 2024, at 7.00% annually on the balance outstanding.
6. No later than March 1, 2024, the Landlord shall ensure that the driveway and outdoor steps have been repaired, specifically the end of the driveway and the steps that lead to the front door.
7. If the Landlord fails to complete the repairs in accordance with paragraph 6, the Tenant may deduct \$205.00 from the monthly rent starting March 2024, until the repairs are completed.

December 15, 2023

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Colin Elsby

Member, Landlord and Tenant Board

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.