



Order under Section 69 Residential Tenancies Act, 2006

Citation: Northstar Property Management Inc. v Conway, 2023 ONLTB 65681

Date: 2023-12-08

File Number: LTB-L-027989-23

In the matter of: 1, 215 GLOUCESTER ST
SAULT STE. MARIE ON P6A1N6

Between: Northstar Property Management Inc. Landlord

And

Rhonda Conway Tenant

Northstar Property Management Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Rhonda Conway (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on August 16, 2023.

The Landlord's Agent, G. Wilson, and the Tenant attended the hearing. The Tenant was assisted by B. Hrynuik, Community Legal Worker for Algoma Community Legal Clinic.

The following witnesses testified at the hearing:
Ella Turner (ET), friend, on behalf of the Tenant Jason
Naccarato (JN), owner, on behalf of the Landlord

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 \$1,300.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$42.74. This amount is calculated as follows: \$1,300.00 x 12, divided by 365 days.
5. The Tenant has paid \$6,700.00 to the Landlord since the application was filed.

6. The Tenant did not dispute that the rent arrears owing to August 31, 2023 are \$1,100.00.
7. The Landlord collected a rent deposit of \$1,300.00 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.
8. Interest on the rent deposit, in the amount of \$50.04 is owing to the Tenant for the period from February 1, 2022 to August 16, 2023.
9. The Landlord is waiving the costs of filing this application.

Section 82 issues

10. The Tenant alleges that the Landlord is in breach of its obligations under the *Residential Tenancies Act, 2006* (Act) and sought a 15% rent abatement for the period of September 1, 2022 to August 31, 2023. Given that the monthly rent is \$1,300.00, the total abatement requested by the Tenant is \$2,340.00 ($1300 \times .15 \times 12$).
11. The Tenant alleges the following issues in her unit:
 - Hole in living room ceiling
 - Rodents (mice and rats) in the rental unit (rodent feces and urine present)
 - Hole in backdoor
 - Basement stairs
 - Mold and water in basement
 - Electrical panel (mice and rats chewed wires)

12. Subsection 20(1) of the Act states the following:

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.

13. In *Onyskiw v. CJM Property Management Ltd.*, [2016 ONCA 477](#), the Court of Appeal held that the LTB should take a contextual approach and consider the entirety of the factual situation in determining whether there was a breach of a landlord's maintenance obligations, including whether the landlord responded to the maintenance issue reasonably in the circumstances. The court rejected the submission that a landlord is automatically in breach of its maintenance obligation as soon as an interruption in service occurs.

14. Subsection 30(2) of the Act states the following:

In determining the remedy under this section, the Board shall consider whether the tenant or former tenant advised the landlord of the alleged breaches before applying to the Board.

15. The Landlord and Tenant Board Interpretation Guideline 5 addresses the responsibility of landlords to maintain residential complexes and rental units, as well as the appropriate

choice of remedies. It further explains that an abatement of rent is not an appropriate remedy where the landlord was not aware of the problem until the application was filed.

16. In accordance with *Onyskiw*, the Landlord was not automatically in breach of its obligations under the Act because there are mice/rats present in the unit, or repairs are required in the unit. A contextual approach must be taken to determine whether or not the Landlord is in breach.
17. As well, a landlord must also be made aware of the issue. In this case, the Landlord's Agent stated that the Landlord was only aware of the issue with the ceiling and only became aware of the other issues when they received the Tenant's written claim pursuant to section 82 of the Act.
18. With respect to the hole in the ceiling, there is no dispute that the repair to the ceiling was not completed. Therefore, I find that the Landlord breached section 20 of the Act by failing to maintain the rental unit in a good state of repair.
19. However, since the Tenant prevented the Landlord from completing the repair, I find that an abatement of rent is not an appropriate remedy in these circumstances. A tenant cannot deny entry or refuse service to a landlord's contractor to repair the unit, and then claim an abatement of rent because the issue remains in disrepair.
20. Based on the evidence before me, there was no dispute that the Landlord's pest control contractor confirmed the presence of mice in the rental unit and further treatments are required. Therefore, I am satisfied that the Landlord is in breach of its obligations under section 20 of the Act.
21. However, I find on a balance of probabilities that the Tenant did not advise the Landlord of this issue prior to her section 82 claim in this application. Therefore, in these circumstances, I find that an abatement of rent for this issue is not an appropriate remedy.
22. The Tenant's evidence was inconsistent at times during the hearing regarding these issues, including specific dates and timeframes for when she notified the Landlord of a particular issue.
23. The Tenant stated that she either emailed, texted or telephoned JN regarding these issues, however no emails or text messages were provided in support of her assertions. JN is the owner of the Landlord company and testified that he has not been responsible for the day-to-day operations for a number of years.
24. JN testified that he did receive a call from the Tenant regarding the ceiling. He also testified that during that call he advised the Tenant of the process for reporting maintenance issues. He further testified that the last telephone conversation he had with the Tenant was with respect to a job posting, and at no point did the Tenant raise any of these other issues with him.

25. The Landlord's Agent stated that the Landlord has a process for reporting maintenance issues. She stated at present there are no outstanding work orders from the Tenant. There was also no dispute that once the Landlord received the Tenant's section 82 claims, they immediately issued work orders and are presently addressing the issues raised by the Tenant.

Living Room Ceiling

26. There is no dispute that a portion of the Tenant's living room ceiling fell in, the Tenant called JN, and the Landlord immediately responded to address the issue. The repair to this area remains unfinished in that it was not sanded and painted. It was not disputed that the repair is incomplete because the Tenant told the Landlord's contractor not to finish. The Tenant stated that she had just cleaned her floors and felt that the Landlord should replace the whole ceiling because the ceiling is "gib rock" and the repair was done with drywall, patching and tape.

Rodents (mice and rats) in the rental unit (rodent feces and urine present)

27. The Tenant stated that she has found rodent feces/urine throughout her rental unit. She also stated that she can hear mice and rats in the walls and ceiling, and one ran over her friend's foot a few months back. She also stated that her dogs chase the mice and rats and one of the dogs caught one just the other day. She stated that she has been telling the Landlord about this issue since March 2022.
28. ET, the Tenant's friend testified that she assisted the Tenant with a deep clean of her rental unit in July 2023. ET testified that there was a foul odour that she recognized as rodent urine in the rental unit prior to beginning the deep clean. She also testified that as she cleaned and moved furniture, she would find mice feces and urine.
29. The evidence before me was insufficient to find that the Tenant advised the Landlord of this issue prior to making a claim pursuant to section 82 of the Act in this application. The Tenant stated that she
30. The Landlord's Agent stated that when the Landlord received the Tenant's claims pursuant to section 82 of the Act, she immediately contacted their pest control company. She stated that the first treatment was on July 25th and there is a scheduled follow up for August 21st. She acknowledged that the pest control company reported that they found evidence of mice in the rental unit. However, she said that the Landlord will continue to treat the unit to eradicate the mice.

Hole in backdoor

31. The Tenant stated that the lock (deadbolt) fell out leaving a hole in the back door. However, on cross-examination, the Tenant stated that the Fire Department told her it had to come off. The Landlord's Agent questioned how a deadbolt lock would just fall out and stated that the Landlord was not aware of this issue before it being raised in this application. The Landlord's Agent confirmed that a work order has been issued to address this issue.

32. The Tenant's evidence was inconsistent on how the hole in the door occurred. The Tenant submitted a photo of the back door which shows a hole where the deadbolt lock should be. Given the evidence before me, I find it more likely than not that the deadbolt lock was removed as opposed to falling into disrepair. Therefore, I am not satisfied that the Landlord is in breach of section 20 of the Act in regard to this issue.
33. As well the evidence before me was insufficient to find that the Tenant notified the Landlord of this issue in advance of this claim in this application.

Basement stairs

34. The Tenant stated that the basement stairs are like a ladder and there is no handrail. She stated that By-Law and the Fire Department are investigating this issue and will contact the Landlord.
35. The Landlord Agent stated that they have not been contacted by By-Law or the Fire Department regarding any issues in the Tenant's rental unit. JN testified that the basement area is not living space and should only be accessed by maintenance contractors/staff.
36. There was no evidence before me that the basement stairs do not meet maintenance or housing standards. The Tenant has not provided any evidence in support of an investigation or order by By-Law Enforcement or the Fire Department regarding this issue. As well, there was no evidence that the Tenant reported this issue to the Landlord prior to making this claim in this application.

37. Mold and water in basement

38. The Tenant stated that when it rains the basement will flood which has resulted in mold in the area. The Tenant stated that she has been reporting this issue since she moved into the rental unit. The Tenant provided a photo of a corner in the basement wherein she asserts the presence of mold and water.
39. The Landlord's Agent stated that the basement is not part of the Tenant's unit and that they were not aware of any issue in the basement.
40. The evidence before me was insufficient to find that there is mold in the basement. The Tenant's single photo depicts a small corner area of the basement cement floor. There appears to be signs of water staining on the floor, however it is not clear whether or not mold and/or water is present.
41. As well, although the Tenant stated that she has been reporting this issue to the Landlord since the tenancy commenced, she provided no evidence in support of this assertion. Consequently, I find on a balance of probabilities that the Landlord was not aware of this issue until the Tenant's claim in this application.

Electrical panel (mice and rats chewed wires)

42. The Tenant stated that the mice/rats have chewed the wires in the electrical panel. She also stated that there are no issues so far.

43. The evidence before me was insufficient to find that there is an issue with the electrical panel at the rental unit. The Tenant confirmed that at present there are no issues with electricity in the unit.

Relief From Eviction

44. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

45. The parties had discussed a payment agreement wherein the Tenant would pay an additional \$100.00 with the lawful rent each month to pay off the rent arrears.

It is ordered that:

1. The Tenant shall pay to the Landlord \$1,100.00 for arrears of rent up to August 31, 2023.
2. The Tenant shall pay to the Landlord the amount set out in paragraph 1 in accordance with the following schedule:
 - \$100.00 on or before December 15, 2023; and
 - \$100.00 on or before the 1st day of each month, for the period of January 1, 2024 to October 31, 2024.
3. The Tenant shall also pay to the Landlord the lawful rent for September 2023, October 2023, November 2023, and December 2023 on or before December 15, 2023.
4. The Tenant shall also pay to the Landlord new rent on time and in full as it comes due and owing on the 1st day of each month for the period of January 1, 2024 to October 31, 2024, or until the arrears are paid in full, whichever date is earliest.
5. If the Tenant fails to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenant to the Landlord pursuant to paragraph 1 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenant, apply to the LTB within 30 days of the Tenant's breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant and requiring that the Tenant pay any new arrears, NSF fees and related charges that became owing after August 31, 2023.

December 8, 2023

Date Issued

Lisa Del Vecchio

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.