



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

**Citation:** Ariyakuddy v Sepulveda Soto, 2023 ONLTB 77724

**Date:** 2023-12-06

**File Number:** LTB-L-014845-22

**In the matter of:** 63 HAMPTON RIDGE DR  
BELLEVILLE ON K8N0E6

**Between:** Sivapakiyam Ariyakuddy Landlord

**and**

Amapola D A Sepulveda Soto Tenant

Sivapakiyam Ariyakuddy (the 'Landlord') applied for an order to terminate the tenancy and evict Amapola D A Sepulveda Soto (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on November 20, 2023.

The Landlord's Legal Representative, Paul Balram, the Landlord, the Tenant's Legal Representative, Dara Saunders, and the Tenant attended the hearing. Glenn McQuaid ('GM') testified on behalf of the Tenant.

**Determinations:**

1. Benjamyn Lang and Sebastian Lang are Amapola D A Sepulveda's two minor children, neither signed the tenancy agreement and they are not tenants. The application is amended to reflect that the only Tenant is Amapola D A Sepulveda.
2. 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.
3. The Tenant was in possession of the rental unit on the date the application was filed.

4. There was not dispute that the Tenant vacated the rental unit on July 31, 2022. Rent arrears are calculated up to the date the Tenant vacated the unit.
5. There was no dispute that the lawful rent is \$2,800.00. It was due on the 1st day of each month.
6. There was no dispute that the Tenant has paid \$8,400.00 to the Landlord since the application was filed.
7. The Tenant's Legal Representative submitted that from November 2020 to August 2021, the period included in the N4 Notice and in the application, the Tenant had an agreement with the Landlord that she would deduct \$1,000.00 from the rent each month for the 10month period in exchange for painting undertaken by the Tenant in the rental unit.
8. The Tenant's Legal Representative submitted that under section 2(1) of the *Residential Tenancies Act, 2006*, rent is defined as the amount of any consideration and that the Tenant's labour amounted to consideration paid for a portion of the rent for the 10-month period specified in the N4 Notice. I accept this argument.
9. The issue to be determined is whether there was an agreement between the Landlord and the Tenant that the Tenant would paint the rental unit in consideration of \$1,000.00 per month of the monthly rent amount for the 10-month period.
10. The party bringing an application always carries the ultimate burden of proving their application on a balance of probabilities. However, once a landlord provides evidence that rent was not paid, the onus generally shifts to the tenant to establish that a disputed payment or payments were in fact made. Moreover, a party that wishes to rely on a particular fact bears the burden of proving that fact—in this case it is the Tenant who alleges that a portion of rent was paid by way of consideration for labour and materials to paint and clean the rental unit and therefore, it is the Tenant's burden to prove on a balance of probabilities that such agreement existed between the Tenant and the Landlord.
11. The Tenant's Legal Representative submits that the Tenant consistently paid the lesser amount of rent, and the Landlord did not serve the N4 Notice until some time after the tenmonth period had concluded. The mere fact that the Tenant consistently paid the lesser amount, and the Landlord did not immediately commence the legal process is not conclusively determinative of an agreement, especially where the Landlord disputes it. However, the Landlord testified that he had served prior N4 Notices and had filed an application with the Board, which he testified was dismissed for errors.
12. The Tenant testified that when the Tenant signed the tenancy agreement with the Landlord on September 16, 2020, the Landlord agreed to clean and repair the unit to bring it to the condition as shown in the listing advertising the unit for rent. The Tenant testified that upon taking possession of the rental unit, there were still feces on the walls and baseboards and urine stains throughout the unit. While the Tenant submitted photographs of the rental unit

upon move in, the photos submitted did not appear to show any feces on the walls or baseboards, or urine stains throughout the unit.

13. The Tenant testified that on behalf of the Landlord, she obtained two different quotes to paint the rental unit for the Landlord, one for \$18,000.00 from Build-All and one for \$16,000.00 from a private painting company. She testified that the Landlord stated that the cost was too high and asked if the Tenant would do it herself for less, to which they agreed on \$10,000.00. The Landlord disputed that there was an agreement and testified that he had no recollection of any conversation regarding third party quotes for painting.
14. The Tenant testified that the Landlord did not have \$10,000.00 to give her up front, so they agreed that \$1,000.00 of the Tenant's rent each month for ten months, beginning in November 2020, would amount to consideration for painting and cleaning the rental unit. The Tenant testified that upon completion of the work, she invited the Landlord to come and see the work she had done, to which the Landlord never responded or attended the rental unit to inspect the work.
15. The Landlord disputed that any such agreement existed between the parties. The Landlord testified that he had the rental unit cleaned prior to giving vacant possession of the rental unit to the Tenant. This was confirmed by the Tenant in her oral testimony as she testified to having spoken to one of the individuals who was hired by the Landlord to clean the rental unit, however, she testified it was not satisfactory. The Landlord also testified that he had the rental unit painted prior to the Tenant moving in.
16. Based on the evidence, I do not find, on a balance of probabilities, that there was a meeting of the minds between the Landlord and the Tenant that the Tenant would complete certain improvements to the rental unit. In my view, it is more likely that the Tenant was not satisfied with the cleanliness of the rental unit as well as the quality and colour of the painting that was done in the rental unit and voluntarily undertook to clean and paint the rental unit herself to her own satisfaction.
17. While GM did testify that he had knowledge of the alleged agreement, his knowledge was entirely based on what he was told by the Tenant. This evidence is hearsay, and, in the circumstances, I give it little weight.
18. While the Tenant claims that quotes to paint the unit were obtained on behalf of the Landlord, the Tenant did not submit copies of any of the alleged quotes to substantiate her statement, which was disputed by the Landlord. The Tenant acknowledged that she did exchange some texts with the Landlord with respect to the agreement but did not submit any copies of those text messages nor any reasonable explanation for not doing so and therefore, I am not satisfied on the evidence before me that an agreement was made.

19. Based on my finding that there was no agreement between the Landlord and the Tenant for the amount of \$10,000.00 in consideration of rent payments, I find that the rent arrears owing to July 31, 2022 are \$12,800.00.
20. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
21. The Landlord collected a rent deposit of \$2,800.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.
22. Interest on the rent deposit, in the amount of \$27.98 is owing to the Tenant for the period from October 1, 2020 to July 31, 2022.

### *Section 82 Issues*

23. At the hearing, the Tenant raised the following issues under section 82 of the Act:
  - feces stuck on the wall and baseboards, and urine stains throughout the rental unit upon move in;
  - no working stove in the rental unit; and
  - no working smoke detectors in the rental unit

### *Feces, Urine Stains and No working Stove*

24. The Tenant testified that upon receiving vacant possession of the rental unit from the Landlord, there were feces stuck on the wall and baseboards and urine stains on the carpet covering the stairs from the main floor to the basement and that there was no working stove in the rental unit. She testified that herself and three others cleaned and painted the entire house. GM testified that they completed the work by the end of October 2020. The Tenant testified that she had eventually removed the carpet from the stairs within a few months of moving in but did not pursue the Landlord for that cost.
25. The Tenant testified that a brand new, working stove was delivered to and installed in the rental unit on October 2, 2020. This was also confirmed in the testimony of the Landlord.
26. Section 29(1) of the Act states the following:
  - (1) A tenant or former tenant of a rental unit may apply to the Board for any of the following orders:
    1. An order determining that the landlord has breached an obligation under subsection 20 (1) or section 161.

27. Section 29(2) of the Act states that no application may be made under subsection (1) more than one year after the day the alleged conduct giving rise to the application occurred.
28. The Tenant served the Landlord with written notice of the Tenant's intent to raise issues under section 82 of the Act on September 23, 2022. As the issues raised were resolved more than one year prior to the Tenant's notice to the Landlord of her intent to raise those issues, I am not satisfied the Tenant was entitled to raise these issues.
29. The Tenant's Legal Representative submitted that the Tenant was not aware of the need to file the application until she received the N4 Notice from the Landlord as until that time, she thought she had an agreement with the Landlord that resolved the cleanliness issues on move in. However, I have found above that there was no such agreement.
30. Moreover, section 190(2) of the Act states the following:
- (2) The Board may extend or shorten the time requirements with respect to any matter in its proceedings, other than the prescribed time requirements, in accordance with the Rules.
31. Section 56 of O. Reg. 516/06 sets out the time requirements that the Board may not extend or shorten under section 190(2) of the Act. It states the following:
56. The following are time requirements that the Board may not extend or shorten under subsection 190 (2) of the Act:
1. All time requirements related to notice requirements for terminating tenancies.
  2. *All deadlines for filing applications*, other than those which the Board is expressly permitted to extend or shorten under subsection 190 (1) of the Act. *[Emphasis Added]*
32. I do not have the jurisdiction to extend the deadline for the Tenant to file their application. As the Tenant is not within time to file an application under section 29 of the Act, I cannot make any order under section 30 of the Act and consequently these issues raised by the Tenant are dismissed.

### *No Working Smoke Detectors*

33. While the issue of the smoke detectors was not disclosed in the chart served by Tenant, the Landlord or their Legal Representative did not object to the Tenant raising this issue under section 82 of the Act at the hearing and, therefore, I have considered the evidence presented at the hearing on this issue.

34. The Tenant testified that there were no working smoke detectors in the rental unit for the entire duration of the tenancy. The Tenant submitted a photograph of one of the ceilings showing a space where there appears a fire protection device is missing and the one beside it connected with a green light, but not fastened to the ceiling. She testified that she notified the Landlord the first week after she moved in that the smoke detectors were defective and needed to be replaced. This was not disputed by the Landlord.
35. It is not clear from the photograph produced by the Tenant if the smoke detector pictured was operational but not properly fastened to the ceiling or if it in fact did not work at all. The Tenant did not submit any additional evidence of any other missing or defective smoke detectors in the rental unit.
36. The Tenant has the obligation to bring to my attention what standard the Tenant is alleging a breach of but the Tenant did not do so. While one smoke detector may be missing, there appears from the photograph to be one in operation directly beside it and the Tenant submitted no evidence of whether or not there are other smoke detectors in the rental unit and if those are operational. It is not clear from the evidence presented by the Tenant if the Landlord is in breach of any health, safety, housing, or maintenance standards and the Tenant has not directed to me any by-law or other legislation to determine a potential breach and so this issue raised by the Tenant is dismissed.
37. The Tenant has filed their own application against the Landlord to address additional issues she sought to raise at this hearing but that were not properly disclosed to the Landlord and the Tenant still has the opportunity to pursue any issues in that application that have not been determined at this hearing under section 82.
38. This order contains all of the reasons in this matter and no further reasons will be issued.

**It is ordered that:**

1. The application is amended to remove the Tenants Benjamyn Lang and Sabastian Lang.
2. The tenancy between the Landlord and the Tenant is terminated as of July 31, 2022, the date the Tenant moved out of the rental unit.
3. The Tenant shall pay to the Landlord **\$10,158.02**. This amount includes rent arrears owing up to the date the Tenant moved out of the rental unit and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
4. If the Tenant does not pay the Landlord the full amount owing on or before December 17, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 18, 2023 at 7.00% annually on the balance outstanding.

**December 6, 2023** \_\_\_\_\_  
**Date Issued**

\_\_\_\_\_  
 Candace Aboussafy  
 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 Tenant must pay as the tenancy is terminated**

Rent Owing to Move Out Date	\$21,200.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$8,400.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$2,800.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$27.98
<b>Less</b> the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$10,158.02</b>

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