



Order under Section 87 89 Residential Tenancies Act, 2006

Citation: Liang v Neghab, 2023 ONLTB 69885

Date: 2023-11-30

File Number: LTB-L-005618-23

In the matter of: 53 Castle Harbour Lane
Thornhill Ontario L3T3A3

Between: Feng Liang Landlord
Jia Lei Pan

And

Amir Kargar Neghab Former Tenant
Meisam Akhavanzanjani
Mina Kargar Neghab

Feng Liang and Jia Lei Pan (the 'Landlord') applied for an order requiring (the 'Former Tenant') to pay the rent and daily compensation that the Former Tenant owes.

Feng Liang and Jia Lei Pan (the 'Landlord') applied for an order requiring (the 'Former Tenant') to pay the Landlord's reasonable out-of-pocket costs that the Landlord incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Former Tenant, another occupant of the rental unit or someone the Former Tenant permitted in the residential complex.

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

The Landlord attended the hearing.

The Tenant's legal representative, Naseer Ahmed, and two of the Former Tenants, Amir Neghab (AN) and Meisam Akhavanzanjani (MA), attended the hearing.

Determinations:

1. I am satisfied that the Landlord served the Former Tenant with the application and Notice of Hearing at least 30 days before the hearing in accordance with Rule 3.3 of the LTB's Rules of Procedure.

2. I am satisfied that the Landlord served the Former Tenant with the application and Notice of Hearing using a method permitted in subsection 191(1.0.1) of the *Residential Tenancies Act, 2006* (the 'Act') and Rule 3.3 of the LTB's Rules of Procedure.
3. These documents were served on August 11, 2023 by email. As per the tenancy agreement the Former Tenant agreed to receive documents by email from the Landlord and provided the Landlord with an email address.
4. The Landlord submitted a copy of the tenancy agreement to support the service by email.
5. The Former Tenant vacated the rental unit on October 1, 2021.
6. The application was filed within one year after the Former Tenant ceased to be in possession of the rental unit.
7. Rent is due on the 23rd of each month in the amount of \$2,392.00.

Landlord's L10 Claim Arrears

8. The position of the Landlord is the Former Tenant did not give proper notice in accordance with the Act. The Landlord claims the Former Tenant advised the Landlord they were moving out in an email dated September 29, 2021. The Landlord claims the Tenant vacated the rental unit on October 1, 2021 and the Landlord is claiming rent under section 88 for the months of November 2021 and December 2021.
9. The position of the Former Tenant is that the Landlord's realtor, met the Former Tenant on October 1, 2021. The Former Tenant submits that a set of rental unit keys, and mailbox key were returned to the Landlord's realtor and the Tenants and the realtor signed a termination of tenancy effective for October 1, 2021.
10. AN claims that he and the other Former Tenants entered into an agreement to exchange service in lieu of rent for work that was done on the rental unit furnace and air conditioning unit due to maintenance issues the Former Tenants were experiencing with the furnace and a/c. Meysam Akhavananzani (MA) is in the HVAC trade profession. AN claims the work MA provided to the Landlord is in the amount of \$5,000.25 and this amount was to be deducted from the rent.
11. The Tenant disputes the arrears amount the Landlord is claiming in the application.

Landlord's Evidence

12. To support his claim the Landlord submitted a ledger for the rental period from April 23, 2021 to January 22, 2022. The ledger shows the Landlord charged a total of \$50,232.00 in rent and the Former Tenant had paid \$37,558.75, including a key deposit the Landlord is holding, for a balance owing of \$12,673.25.

Tenant's Evidence

13. The Former Tenant submitted a copy of the termination of tenancy document that was signed by the Landlord's realtor.
14. The photo shows a signed document by the Former Tenant AN, and the Landlord's realtor. In the photo there is also a set of keys on the document. The document states the Landlord and the Tenant agree to terminate the tenancy on October 1, 2021.
15. The Former Tenant submitted documentary evidence in the form of an invoice for work done on the rental unit furnace to support his claim of the agreement the Former Tenant alleges they entered into with the Landlord to provide service of the air conditioner unit in lieu of rent.
16. The Former Tenant also submitted an email sent by AN to the Landlord after the work was completed on the furnace confirming that the amount of \$5,000.25 will be deducted from the rent. AN claims a balance in favour of the Former Tenants in the amount of \$216.25 which AN states will be deducted from the next months rent.
17. AN relies on his oral testimony to support this claim of the agreement with the Landlord.
18. MA did not appear on the day of the hearing to provide testimony to support the invoice he issued to the Landlord.
19. The Tenant also submitted documentary evidence the Landlord immediately attempted to rent out the rental unit on October 9, 2021 and claims the Landlord accepted the termination document that was signed by AN and the Landlord's realtor.

The Act and Analysis

20. Section 88 of the Act states:

Arrears of rent when tenant abandons or vacates without notice

88 (1) If a tenant abandons or vacates a rental unit without giving notice of termination in accordance with this Act and no agreement to terminate has been made or the landlord has not given notice to terminate the tenancy, a determination of the amount of arrears of rent owing by the tenant shall be made in accordance with the following rules:

1. If the tenant vacated the rental unit after giving notice that was not in accordance with this Act, arrears of rent are owing for the period that ends on the earliest

termination date that could have been specified in the notice, had the notice been given in accordance with section 47, 96 or 145, as the case may be.

2. If the tenant abandoned or vacated the rental unit without giving any notice, arrears of rent are owing for the period that ends on the earliest termination date that could have been specified in a notice of termination had the tenant, on the date that the landlord knew or ought to have known that the tenant had abandoned or vacated the rental unit, given notice of termination in accordance with section 47, 96 or 145, as the case may be.

21. Section 37 of the Act states:

Termination by agreement

(3) A notice of termination need not be given if a landlord and a tenant have agreed to terminate a tenancy.

22. Section 82 of the Act allows for a Tenant or Former Tenant to raise issues of maintenance and that, "...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 if the tenant,..."

23. Section 29(2) of the Act states:

Tenant applications

29 (1) A tenant or former tenant of a rental unit may apply to the Board for any of the following orders:

Time limitation

(2) No application may be made under subsection (1) **more than one year** after the day the alleged conduct giving rise to the application occurred.

[Emphasis added]

Former Tenants Claim Service in Lieu of Rent

24. With the evidence before me and on a balance of probabilities I find the Former Tenants are not entitled to a rent abatement remedy of the \$5,000.25 they claim are in lieu of rent for services the Former Tenants provided.

25. The Former Tenants make their claim with the submission of the evidence on September 19, 2023 more than one year the Former Tenants were eligible to file their own application with the Board. In accordance with section 29(2) the Former Tenants have not submitted their application within one year of the issue that could have given rise to the Former Tenants application, and therefore the consideration for any abatement is dismissed.
26. Given the above the amount of \$5,000.25 will be included in the arrears owed to the Landlord.

Landlord's Claim Under Section 88

27. With the evidence before me and on a balance of probabilities I find the Landlord is not entitled to the rent arrears he is claiming for the months of October 2021, November 2021 and December 2021.
28. Section 37(3) allows for a Tenant and Landlord to end the tenancy agreement without the requirement of a form notice if the Landlord and Tenant have agreed to end the tenancy. In the case before the Board the Landlord's realtor was acting as agent for the Landlord and had the capacity to act on behalf of the Landlord and signed the document acknowledging the Landlord and Former Tenant were terminating the tenancy as of October 1, 2021.
29. I am satisfied with the Former Tenants evidence of the photo of the signed document and the photo of the keys that were returned to the Landlord's realtor, and that the realtor had signed the agreement.
30. Further, I am persuaded by the Former Tenants evidence the Landlord acknowledged this agreement by immediately placing the rental unit open to rent on October 9, 2021 by listing the rental unit in MLS.
31. Given the above the Landlord's claim for arrears for the months October 2021, November 2021 and December 2021 are dismissed and will be removed from the final arrears calculations the Landlord is claiming in the application.
32. I note that the Landlord testified he had applied the last month's rent deposit to the Former Tenants rent arrears back in April 2020 and therefore the last month's rent deposit has been added to the Former Tenants payments in the Landlord's ledger, however I am granting the Former Tenant the interest the Landlord owes on the last month's rent deposit and this amount is calculated below.
33. I also note that the Tenant vacated the rental unit on October 1, 2021 and I find the Landlord is entitled to the nine days of daily compensation calculated as follows: $\$2,392.00 \times 12 \text{ months} / 365 = \78.64 . The amount of \$78.64 will be included in the total amount owing the Landlord.
34. The total amount the Former Tenant owes the Landlord is **\$6,135.57** calculated as follows:

Rent charged April 23 2020 to September 22, 2021 = \$43,056.00

Rent paid by Former Tenant April 23 2020 to September 22, 2021 = \$37,558.75

Balance up to September 22, 2021 = \$5,497.25

Plus daily compensation from September 23, 2021 to October 1, 2021 = \$707.76

Minus interest on the last month's rent deposit = \$69.44

Total arrears owing = **\$6,135.57**

Landlord's Claim for Damage

35. The Landlord claims the Former Tenant wilfully or negligently caused undue damage to the rental unit or residential complex causing damage to light fixtures, toilets, stoves and walls and floors in the rental unit.
36. To support his claim the Landlord submitted a copy of a quote from Rapid Painting to support his claim of the damage caused by the Former Tenant.
37. To support his claim the Landlord also submitted photos of the rental unit after the Former Tenant vacated.
38. The photos show various items and areas in the rental unit such cabinets and shelves in the bathroom, several room floors with scratches, walls with dry wall plug holes from hanging items on the wall and photos of a kitchen stove and basement toilet.
39. The Landlord also testified that he had re-rented the rental unit without fixing most of the items he claimed were damaged in his application, but was intending to do at a later date.

Analysis and Findings

40. On a balance of probabilities means the Landlord must show that his version of events is the more probable and should succeed. Saying something is proven on a balance of probabilities simply means that it is more likely than not to have occurred. It means that it is probable, i.e., the probability that some event happened is more than 50%--indeed, 50.1% is sufficient. In all cases, the decision maker must weigh up the evidence and decide which version is most probably true. Consequently, the real truth may never be known. All that can be done is to decide which of the parties has presented the most probable version.
41. In matters where the Landlord is claiming damage the burden of proof is on the Landlord to show the Former Tenant **wilfully or negligently caused undue damage**, and that the out of pockets costs the Landlord is claiming are not just due to normal wear and tear.
42. The onus rests with the applicant, in this case the Landlord to provide sufficient evidence to support his claim there was wilful or negligent damage to the rental unit caused by the

Former Tenant. I do not find the Landlord's evidence persuasive enough, given his photos he submitted of the alleged damage.

43. In my view the worn cabinet doors are a result of normal wear and tear that happens when cabinet doors are used frequently. Further, I do not find that holes in dry wall from dry wall plugs from items the Former Tenant may have hung such things as pictures or shelves constitutes wilful or neglectful damage.
44. I believe the Former Tenant is entitled to treat the rental unit like a home, and given that many people hang photos and shelves in their home is it unreasonable for the Landlord to claim the Former Tenant's actions as wilful or neglectful damage.
45. With regards to the floor scratches, the Former Tenant testified that many of the scratches existed at the time they moved into the rental unit. I am persuaded by the Former Tenant's testimony and find him credible with the details regarding the floor scratches existed when they moved in.
46. I am further persuaded by the Landlord's own testimony that he has not repaired the floors since the Former Tenant vacated the rental unit and has re-rented the rental unit out to new tenants. On a balance of probabilities I find this behaviour of the Landlord is consistent with the Former Tenant's testimony that the floor scratches existed prior to the Former Tenant moving in.
47. The Landlord also claims general damage for a dirty stove, mold in the bathroom and a broken toilet mechanism in the basement bathroom and I find the Landlord has not met the burden of proof to support his claim these claims were wilfully or negligently caused by the Former Tenant. I find the items the Landlord has provided in the photos show wear and tear and not wilful damage.
48. With regards to the Landlord's claim of garbage removal, in my view garbage removal of items in a rental unit are the cost of doing business as a Landlord. I do not find it reasonable that a Landlord in the business of renting would not expect to have to perform light cleaning and garbage removal once a former tenant has vacated, which is the case here.
49. Based on the Landlord's photo evidence before me I am not persuaded that the Landlord has met his burden of proof to support his claim the Former Tenant wilfully or negligently caused damage to the rental unit, and therefore this portion of the Landlord's claim is dismissed.
50. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
51. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
52. This order contains all reasons for the determinations and order made. No further reasons will be issued.

It is ordered that:

1. The Former Tenant shall pay to the Landlord \$6,135.57, which represents rent and compensation owing up to October 1, 2021.
2. The Former Tenant shall pay to the Landlord \$201.00 for the cost of filing the application.
3. The total amount the Former Tenant owes the Landlord is \$6,336.57.
4. If the Former Tenant does not pay the Landlord the full amount owing on or before December 11, 2023, the Former Tenant will start to owe interest. This will be simple interest calculated from December 12, 2023 at 7.00% annually on the balance outstanding.

November 30, 2023

Date Issued

Greg Brocanier
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.

* Refer to the attached Summary of Calculations.