



Order under Section 69 Residential Tenancies Act, 2006

Citation: Zenarosa-Sterling v Shavalier, 2023 ONLTB 73467

Date: 2023-11-09

File Number: LTB-L-028727-22

In the matter of: UPPER UNIT, 5973 GREY AVE NIAGARA
FALLS ON L2G4B2

Between: Angela Zenarosa-Sterling and Delroy Sterling Landlords

And

Patrick Shavalier and Kady Jackson Tenants

Angela Zenarosa-Sterling and Delroy Sterling (the 'Landlords') applied for an order to terminate the tenancy and evict Patrick Shavalier and Kady Jackson (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe (L1 application) and because the Tenants have been persistently late in paying the Tenants' rent (L2 application).

This application was heard by videoconference on July 12, 2023. The Landlords and the Tenants attended the hearing.

It is determined that:

L1 Application – Rent arrears

1. The Landlords served the Tenants with a valid Notice to End Tenancy Early for Non-payment 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 was still in possession of the rental unit.
3. The lawful rent is \$1,383.75. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$45.49. This amount is calculated as follows: \$1,383.75 x 12, divided by 365 days.
5. The Tenants has paid \$4,968.16 to the Landlords since the application was filed.
6. The rent arrears owing to July 31, 2023 are \$15,933.09.

7. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlords collected a rent deposit of \$975.00 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 \$48.78 is owing to the Tenants for the period from November 21, 2019 to July 12, 2023.

L2 Application- Persistent late

10. On May 25, 2022, the Landlords gave the Tenants an N8 notice of termination deemed served on the same day. The notice of termination alleges that the Tenants have paid their rent late 11 times out of 12 times between April 1, 2021 till May 1, 2022.
11. I find that the Tenants have persistently failed to pay the rent on the date it was due. The rent is due on the 1st day of each month. After the N8 was served, arrears and late payments continued to occur. The last payment the Landlords received from the Tenants was October 27, 2022.

Section 82 Issues raised by Tenants at the hearing

12. The Tenants filed a notice of issues the Tenants intend to raise at the hearing pursuant to Section 82 of the *Residential Tenancies Act, 2006* (the 'Act').
13. The Tenants raised the following maintenance and Tenant's rights issues:
 - Mice and squirrels in the attic
 - Poor condition of the driveway and walkway
 - Water leaking on the electrical panel in the basement laundry room
 - Washing machines leaking in laundry room
 - Cracks and water stains on living room ceiling
 - Front entrance/mud room unfinished
 - Unfinished wood floor in second bedroom
 - Escalated rent as a result of having to move to an upper-level unit

The Tenants' Testimony

14. The Tenant PS testified that they moved from a basement unit in the complex to the upper unit in March 2021. There has been an ongoing mouse and squirrel infestation in the attic of the rental complex. He testified that he told the Landlord about this issue in January 2022. There have been multiple attendances by pest control to eradicate the issue, contractors have blocked and barricaded holes but the squirrels are able to bite and chew through and

are still gaining access. There were mice in the unit for about one year, but that issue has been resolved. Currently the only issue is the sound of animals in the attic.

15. PS testified that the driveway and sidewalk are cracked and heaving and cause a tripping hazard. He testified that the Tenant JK fell on the cracked pavement. He tendered two photos of the walkway showing multiple cracks with some weeds growing through the pavement.
16. PS testified that water leaks through the basement wall in the laundry room and comes down over the electrical plug for the laundry machines. He entered several photos of the laundry machines, electrical plug and the exhaust hoses exiting an exterior wall. The Tenant asserted that the photos show the wall and wood beside the electrical outlet are wet at the time the photos were taken. PS testified that water pools on the floor in the basement under the washing machines.
17. PS testified that the floor in the second bedroom is not sound proof and they can hear the lower tenant's baby crying. The Tenants assert that the floor should be sound proofed.
18. PS testified that they moved to the upper level because their basement unit was in poor condition and had a sewage odor. He testified that they paid \$375.00 per month more to move to the upper level because of this. He testified that they felt they should have been offered the opportunity to move back to the basement after it was renovated but the Landlords denied them that right.
19. The Tenants seek a rent abatement of 100% for their issues raised under section 82.

The Landlord's Testimony

20. The Landlord AS testified and provided evidence of multiple invoices and work orders for Orkin pest control services and K5 Wildlife services. Orkin was retained in April 2022 and closed off holes around windows. Additional services were retained in June 2022 to provide additional sealing. The Landlords were contacted again in March 2023 but there were no points of entry discovered and no wildlife found. She testified that the Tenants called the Landlords again the week before the hearing about hearing squirrels in the attic again and the Landlords have made arrangements for services to return again.
21. AS testified the Tenants did not advise them of any issues with the walkway or driveway until August 2022 when they reported that the Tenant KJ had fallen a month prior. Since then, the Landlords have not had funds to repair the walkway because of the substantial arrears. The Landlords sent the Tenants several payment plan proposals so that some cash flow would facilitate the repairs, however the Tenants have never responded to the Landlords and the Landlords have not received rent payments since October 2022.
22. AS testified that the Tenants never reported an ongoing water issue in the basement. She testified that in April 2021 a wet basement specialist was contracted to resolve an exterior issue which was repaired and no further issues were reported. A hose came detached from one of the washing machines in 2022 but it was quickly remediated with no further issues.

The Landlords denied being informed of any other issue. Since being notified of the allegations in the Tenants' section 82 form and evidence, they have contacted the wet basement specialist to return and inspect the property as soon as possible.

23. AS testified that the Landlords conduct semi annual inspections. The Landlords have been denied 2 of the last 3 inspections of the unit. The Tenants allowed access to the Landlords in June 2023. She testified that the ceiling crack was not noted by them or reported by the Tenants but that the issue will be addressed within one week from the hearing date.
24. DS testified that the Tenants denied him access on 3 occasions to complete painting of the mud room. The Tenant was demanding that the Landlord finish the mud room in a specific manner, however the Tenant sent a text message from to the Landlord on June 9, 2022 stating that the Tenants are not concerned with the mud room being completed before they move out of the unit. Consequently, the Landlord has not yet painted the mud room.
25. DS testified that the floors in the unit are the original wood floors and are the same throughout the unit with the exception of the kitchen, which is laminate. He testified that the Tenants have never complained to him, but rather the basement tenants have raised issues about the Tenants banging on the floor above them.
26. AS testified that the Tenants inquired about the rent charged in the upper unit when it became vacant. The Tenants entered into a new one-year lease with the Landlord and moved into the upper-level unit March 15, 2021. DS testified that the Tenants never requested to move back to the basement unit. Minor renovations were done to the basement unit and it was ready for occupancy in April 2021. DS testified that the Tenants asked what the new rent in the basement would be, to which they informed the Tenants that rent would be \$1,200.00 per month. The Tenants replied back that they would stay in the upper-level unit.

S.82 Analysis

27. Subsection 20(1) of the *Residential Tenancies Act, 2006* ("Act") states that 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.
28. 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 the 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.
29. In applying section 20(1) of the Act and *Onyskiw* to the facts before me, I find that the Landlords have acted reasonably and timely with respect to the mice and squirrels in the attic. There have been repeated efforts made by professionals to address the issue and the Landlords have followed up to any further complaints by the Tenants. The Tenants only

recently notified the Landlords of a recurring issue with the sound of animals in the attic and the Landlords have already made a request for a revisit from the contractor. I find therefore that the Landlords have satisfied their section 20(1) obligations with respect to this issue.

30. Based on the evidence before me, I am satisfied on a balance that the Landlords have responded reasonably to the remaining maintenance issues when they were brought to their attention. In several instances, I find that the Tenants did not report various issues to the Landlords until filing their section 82 form and evidence one week prior to the hearing. Specifically, I find that the Tenants failed to notify the Landlords of their complaints relating to the mud room, bedroom floor, living room ceiling and basement. At the hearing, the Landlords gave an undertaking to address the issues raised immediately. I do not find that a rent abatement is appropriate for these issues and this portion of the Tenants' claim is dismissed.
31. However, I find that the walkway is in a state of disrepair and the Landlords have known about this since August 2022. Two photographs entered by the Tenants show the walkway (a 4–5-foot section of concrete) between 2 structures, which is cracked and uneven. The walkway forms part of the rental complex and must be maintained in a good state of repair.
32. The Landlords admit that repairs are required but that they are financially challenged at this time. I appreciate that the Landlords are negatively affected by the substantial arrears, however, a landlord is not excused from their obligations to maintain the unit and the rental complex, even if the tenant does not pay rent. In this instance, I find that the Landlords are in breach of their obligations pursuant to subsection 20(1) of the Act.
33. I find that a lump sum rent abatement of \$400.00 is reasonable for the uneven concrete. This abatement shall be deducted from the arrears.
34. Section 22 of the Act states:

A landlord shall not at any time during a tenant's occupancy of a rental unit and before the day on which an order evicting the tenant is executed substantially interfere with the reasonable enjoyment of the rental unit or the residential complex in which it is located for all usual purposes by a tenant or members of his or her household.

35. In relation to the Tenants' request for an abatement because the Landlords failed to offer them the basement unit to re-rent, I do not, on a balance, find that the Landlords interfered with the Tenants' reasonable enjoyment of the unit. The Tenants approached the Landlords and entered into a one-year lease with the Landlords for a new unit. There was no evidence led to support that the Tenants were seeking a temporary move, or that they had any intention to move back to the basement. Therefore, I do not find that the Landlords interfered with the Tenants and as such, this portion of the Tenants' claim is dismissed. Relief from eviction
36. 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 Landlords

attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

37. The Tenants both have income and there are no dependent children living in the unit. They have family and friends to stay with until they can secure alternate accommodations. Therefore, I find that a standard 11-day termination is reasonable in the circumstances.

It is ordered that:

1. Pursuant to the L2 application, the tenancy between the Landlords and the Tenants is terminated. The Tenants must move out of the rental unit on or before November 20, 2023
2. If the unit is not vacated on or before November 20, 2023, then starting November 21, 2023, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or after November 21, 2023.
4. The Tenants shall pay to the Landlord \$13,857.44. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit, interest the Landlords owe on the rent deposit and the rent abatement awarded to the Tenants are deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
5. The Tenants shall also pay the Landlords compensation of \$45.49 per day for the use of the unit starting July 13, 2023 until the date the Tenants move out of the unit.
6. If the Tenants do not pay the Landlords the full amount owing on or before November 20, 2023, the Tenants will start to owe interest. This will be simple interest calculated from November 21, 2023 at 7.00% annually on the balance outstanding.

November 9, 2023

Date Issued

Donna Adams

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 May 21, 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 as the tenancy is terminated

Rent Owing To Hearing Date	\$20,063.38
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$4,968.16
Less the amount of the last month's rent deposit	- \$975.00
Less the amount of the interest on the last month's rent deposit	- \$48.78
Less the amount the Landlords owe the Tenants for an abatement	- \$400.00
Total amount owing to the Landlord	\$13,857.44
Plus daily compensation owing for each day of occupation starting July 13, 2023	\$45.49 (per day)

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