



Order under Section 87 88.1 88.2 Residential Tenancies Act, 2006

Citation: Leavoy v McDowell, 2023 ONLTB 73759

Date: 2023-11-08

File Number: LTB-L-016355-23

In the matter of: Lower, 1120 Vimy Avenue
Windsor Ontario N8W1N7

Between: Jay Leavoy Landlord

And

Ann McDowell Former Tenant

Jay Leavoy (the 'Landlord') applied for an order requiring (the 'Former Tenant') to pay the rent and daily compensation that the Former Tenant owes.

The Landlord also applied for an order requiring (the 'Former Tenant') to pay the Landlord's reasonable out-of-pocket costs that are the result of the Former Tenant's conduct or that of another occupant of the rental unit or someone the Former Tenant permitted in the residential complex. This conduct substantially interfered with the Landlord's reasonable enjoyment of the residential complex or another lawful right, privilege or interest.

The Landlord also applied for an order requiring (the 'Former Tenant') to pay the Landlord's reasonable out-of-pocket costs that are the result of the Former Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

This application was heard by videoconference on October 19, 2023.

The Landlord, the Former Tenant and her legal representative Tom Vanner attended the hearing.

Determinations and Reasons:

1. By way of background, the Landlord asserts that the Former Tenant failed to pay him costs associated with rent, her portion of the utilities as described in the lease agreement and

expense incurred for the removal of a couch left outside of the residential complex when the Tenant vacated.

2. The Former Tenant acknowledged that she provided short notice to the Landlord to terminate her tenancy. She said that she was concerned for the security of her tenancy and applied for new accommodation and when it was approved, she opted to accept and move out. She did not provide the Landlord with 60 days notice as required by s.44(4) of the *Residential Tenancies Act, 2006* (the 'Act') which says that the period of notice shall be given at least 60 days before the expiration date specified in the tenancy agreement, to be effective on that expiration date.
3. The Former Tenant gave to the Landlord an N9 notice to terminate the tenancy August 16, 2021 with September 30, 2021 as the termination date. As explained at the hearing, the earliest termination date as per the ACT is October 31, 2021. I note, the Landlord did not consent to an earlier termination. This means that the Former Tenant is responsible for the costs claimed in the application. However, the parties advised that the Landlord sold the rental unit effective October 29, 2021. As such, the Landlord can only seek costs to the date the agreement of purchase and sale closed, October 29, 2021.
4. At the hearing, I was satisfied the Landlord is entitled to the costs claimed in the application. However, I instructed the Landlord to provide a post hearing submission showing the per-diam calculation for the amounts claimed in the application up to and including October 29, 2021. The Landlord's submissions were due by October 23, 2023 and the Former Tenant's reply submission by October 27, 2023. Although the Former Tenant sought to challenge their obligation to pay, I remind the parties, the purpose for the post hearing submission was to determine the amount owing to October 29, 2023.
5. The Landlord's disclosure included: the lease agreement, notices, invoices and various documents.
6. 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.
7. As explained below, the Landlord proved the allegations contained in the application on a balance of probabilities. Therefore, the Former Tenant shall pay to the Landlord the amounts as set out below.
8. 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. These documents were served to the Former Tenant by hand on September 14, 2023.
9. The Former Tenant vacated the rental unit on September 30, 2021.

10. The application was filed within one year after the Former Tenant ceased to be in possession of the rental unit.

Compensation and Daily Compensation Owing

8. The lawful rent was \$986.00 and due on the first of each month.
9. Based on the rent, the daily rent/compensation is \$32.42 This amount is calculated as follows: \$986.00 x 12, divided by 365 days.
10. The Former Tenant has not made any payments since the application was filed.
11. Contrary to the Landlord's post hearing submission, the amount of rent owing by the Tenant is \$940.18 versus \$922.40 as the Landlord did not calculate based on the formula detailed in paragraph 9.
12. The Landlord owes to the Tenant interest in the amount of \$64.28 for the last month rent deposit collected on July 1, 2017. This amount shall be deducted from the total owing.
13. The total amount of rent owing to the Landlord is **\$875.90**.
14. The Landlord incurred costs of **\$201.00** for filing the application and is entitled to reimbursement of those costs.

Compensation for Substantial Interference

14. The Former Tenant, another occupant of the rental unit or someone the Former Tenant permitted in the residential complex substantially interfered with the reasonable enjoyment of the residential complex by the Landlord or another lawful right, privilege or interest of the Landlord.
15. Based on the best evidence before the Board and on a balance of probabilities, I find the Landlord incurred costs in the amount of \$23.23 associated with the removal and disposal of the couch the Tenant left curbside when she moved out of the rental unit September 30, 2023. The Landlord disposed of the couch on November 6, 2023. The Landlord provided receipts and milage calculation to support his claim.
16. The Landlord incurred reasonable out-of-pocket expenses of **\$23.23**. These expenses were incurred as a result of the substantial interference. An order will issue accordingly.

Compensation for Unpaid Utility Costs

19. The Former Tenant failed to pay the required utility costs that they were required to pay under the terms of the tenancy agreement.
20. The Landlord incurred reasonable out-of-pocket expenses of **\$222.41** as a result of the Former Tenant's failure to pay heat, electricity and water costs.

21. The Landlord evidence includes the various invoices and pro-rated calculations as prescribed in the lease agreement. I was satisfied the Former Tenant failed to meet her obligations to pay the required amounts.

23. This order contains all of the reasons for the decision within it.

It is ordered that:

1. The Former Tenant shall pay to the Landlord **\$875.90**, which represents rent and compensation owing up to October 31, 2023.
2. The Former Tenant shall also pay to the Landlord **\$23.23**, which represents the reasonable out-of-pocket expenses the Landlord incurred as a result of the substantial interference for costs to remove the couch.
3. The Former Tenant shall also pay to the Landlord **\$222.41**, which represents the reasonable out-of-pocket expenses the Landlord incurred as a result of the unpaid utility costs.
4. The Former Tenant shall pay to the Landlord **\$201.00** for the cost of filing the application.
5. The total amount the Former Tenant owes the Landlord is **\$1,322.54***. See Schedule 1 for the calculation of the amount owing.
6. If the Former Tenant does not pay the Landlord the full amount owing on or before November 19, 2023, the Former Tenant will start to owe interest. This will be simple interest calculated from November 20, 2023 at 7.00% annually on the balance outstanding.

November 8, 2023

Date Issued

Dana Wren

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.

**Schedule 1 SUMMARY OF
CALCULATIONS**

Amount the Former Tenant must pay the Landlord:

Rent and Compensation Owing To	\$875.90
Substantial Interference Costs	\$23.23
Utility Costs	\$222.41
Application Filing Fee	\$201.00
Total amount owing to the Landlord	\$1,322.54