



Order under Section 69 Residential Tenancies Act, 2006

Citation: Sanmugalingam v Byrd, 2023 ONLTB 65517

Date: 2023-10-10

File Number: LTB-L-056693-22

In the matter of: 1589 GOYEAU ST
Windsor ON N8X3L5

Between: A bilash Sanmugalingam Landlord

And

Orlonzo Byrd Tenant

Abilash Sanmugalingam (the 'Landlord') applied for an order to terminate the tenancy and evict Orlonzo Byrd (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes ('L1 Application').

The Landlord also applied for an order to terminate the tenancy and evict the Tenant because the Tenant has been persistently late in paying the Tenant's rent ('L2 Application').

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

The Landlord's legal representative, Trevor Scheib ('TS'), and the Tenant attended the hearing.

Determinations:

L1 Application

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 \$842.00. It is due on the 1st day of each month.

4. Based on the Monthly rent, the daily rent/compensation is \$27.68. This amount is calculated as follows: \$842.00 x 12, divided by 365 days.
5. The Tenant has paid \$1,690.00 to the Landlord since the application was filed.
6. The parties agreed that the rent arrears owing to September 30, 2023 are \$9,498.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. TS said that based on his information, there is no rent deposit. The current Landlord purchased the rental unit after the tenancy commenced, and TS said the Landlord was not given a rent deposit as part of the sale of the property.
9. The Tenant said he did pay a rent deposit of \$804.00 when the tenancy commenced in April of 2015 or 2016. He said he has not been paid interest on the rent deposit. I accept the Tenant's evidence and find that he paid a rent deposit of \$804 at the beginning of the tenancy to his former landlord. A rent deposit can only be applied to the last month of the tenancy: ss. 105(10), *Residential Tenancies Act, 2006*.
10. Covenants concerning things related to a rental unit or the residential complex in which it is located run with the land: s. 18, *Residential Tenancies Act, 2006*.
11. I therefore find that the Landlord is holding a rent deposit of \$804.00. There was not sufficient evidence before me to establish the date that it was collected.

L2 Application

12. On September 12, 2022, the Landlord gave the Tenant an N8 notice of termination. The notice of termination contains the following allegations: the rent was not paid on time for the months of May, June, July, August, and September 2022.
13. The Landlord has not proven that the Tenant has persistently failed to pay the rent on the date it was due. The Landlord did prove the allegations in the N8 notice, but I find that those allegations do not satisfy the requirement under s. 58(a) that the rent be *persistently* not paid on time.
14. The rent is due on the first day of each month. The rent was paid late 5 times before the N8 notice was given. There was no allegation that the rent was paid late more than 5 times before the N8 notice was given. In my view, to satisfy the test to establish that a tenant has persistently failed to pay rent by the date it was due, a landlord must establish that the rent was paid late for at least 50% of the periods over the course of 12 months (where rent is paid monthly).
15. The L2 Application is therefore dismissed.

Relief from Eviction

Subsection 83(3)(a)

16. The Tenant raised several maintenance issues with the property. He did not comply with the requirements of section 82 of the Act and rules 19.4 and 19.5 of the LTB's *Rules of Procedure*, so he was not permitted to raise these issues under section 82.
17. The Tenant gave evidence of these issues to the extent that he alleged they were ongoing as of the hearing date. These issues may be relevant pursuant to subsection 83(3)(a) of the Act, which requires the LTB to refuse to grant a landlord's application if the landlord is in serious breach of their obligations under the Act or a material covenant of the tenancy agreement.
18. The Tenant said the heat for the rental unit was not working for the entire 2022/2023 Winter, and is still not working. He said that he was required to use space heaters to heat the rental unit. He said he first told the Landlord about this issue around October 2022 and a couple of other times after that, but there was no response from the Landlord. He said there are 2 other rental units in the residential complex, and the heat does work for those rental units.
19. The Tenant also said that the stove in the rental unit has not worked for the last nine months, and he has complained several times, and the Landlord has not responded.
20. The Tenant also said that one of the two outlets in the kitchen does not work, requiring him to run an extension cord to power a portable stovetop. He said he might have complained about this, but by the point the issue arose, he was not expecting any response.
21. The Tenant said that the two doors leading from the rental unit to the back alley are broken so the rental unit could be accessed from the outside. He said he has complained about this several times.
22. The Tenant said that his cell phone from which his complaints were sent got "smashed", so he did not have evidence of making the complaints available at the hearing.
23. TS said that to his knowledge, there are no outstanding issues with the rental unit. He noted that the Tenant has had TS's contact information for some time, and if the Tenant was having trouble contacting the Landlord, he could have reached out to TS as the Landlord's legal representative.
24. TS also noted that the only evidence of the issues raised by the Tenant under s. 83(3)(a) was his *viva voce* evidence, without any supporting documentation.
25. Under subsection 83(3)(a), the LTB is not required to refuse to grant an application simply because the Landlord may be in breach of their obligations under the Act or the lease. The breach must be serious.
26. I also note that to prove a fact on a balance of probabilities, there must always be sufficient clear, convincing, and cogent evidence of the fact: *FH v McDougall*, 2008 SCC 53, para 46.

27. The Tenant's evidence about these issues was quite vague, in particular with respect to when and how he notified the Landlord of these issues. I find that the Tenant has not produced sufficient clear, convincing, and cogent evidence to prove his allegations on a balance of probabilities as it relates to establishing if and when he advised the Landlord of these issues. The Landlord cannot be in serious breach of his obligations under the Act or lease unless it is proven he was aware of the issues.
28. The Tenant has therefore not proven on a balance of probabilities that the Landlord is in serious breach of his responsibilities under the Act or lease. Because of this determination, it is not necessary for me to make further determinations about these issues.
29. This determination is without prejudice to the Tenant's right to file a tenant application relative to these issues. In other words, the Tenant is not precluded from filing a tenant application with the LTB relative to the issues outlined above if he so wishes.

Subsections 83(1) and 83(2)

30. TS said that he gave the Tenant a letter together with the N4 notice inviting the Tenant to contact him about arranging a payment plan. He said the Tenant did not make any contact until a week before this hearing, and many rent payments have been missed since the N4 was served.
31. TS said that non-payment of rent has a big impact on the Landlord. He is an individual, and when rent is not paid, he has to pay the mortgage for the rental property out of his pocket. TS said this has impacted the Landlord's credit, and it has had both a mental and financial impact on the Landlord. He asked for an order terminating the tenancy and evicting the Tenant.
32. The Tenant agreed that he owes \$9,498.00 in rent arrears to the end of September 2023. He said that he wants to maintain the tenancy and asked that a payment plan be implemented.
33. The Tenant said that he has lived in the rental unit for 8 years. He lives alone in the rental unit.
34. The Tenant said he works in construction, and his net monthly income is between \$3,000.00 and \$4,000.00. Excluding the rent, the Tenant's evidence was that his fixed monthly expenses, including transportation, insurance, cell phone, internet, and food amount to approximately \$975.00 per month. Taking the lower end of the monthly net income range provided by the Tenant, this would leave approximately \$2,000.00 per month left over to pay the rent, an amount toward the rent arrears, and any other expenses that may arise.
35. The Tenant proposed to simply double his rent payments until the rent arrears are paid in full. It would take 12 months to pay all the rent arrears according to this plan (with the last payment being a lesser amount).

36. I find this plan to be reasonable, and the Tenant was credible in terms of his ability and intention to comply with it.

37. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), 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.

It is ordered that:

1. The Tenant shall pay the Landlord \$9,684.00, which represents the rent arrears owing as of the hearing date to September 30, 2023 and the Landlord's costs of filing the application.
2. The Landlord's application for eviction is denied on the following conditions:
 - a) If the Tenant has not yet paid the rent for October 2023, then the rent for October shall be paid in full to the Landlord on or before October 21, 2023.
 - b) The Tenant shall pay an additional \$842.00 toward the rent arrears and the Landlord's costs on or before October 21, 2023.
 - c) The Tenant shall pay the Landlord the full monthly rent, plus an additional \$842.00 toward the rent arrears by the first day of each month for the months of:
 - i. November 2023;
 - ii. December 2023;
 - iii. January 2024;
 - iv. February 2024;
 - v. March, 2024;
 - vi. April 2024;
 - vii. May 2024;
 - viii. June 2024; ix. July 2024; and
 - x. August 2024.
 - d) The Tenant shall pay the Landlord the lawful monthly rent for September 2024, plus an additional \$422.00 toward the rent arrears, on or before September 1, 2024.
3. 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 September 30, 2023.

October 10, 2023

Date Issued

Mark Melchers

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.