



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

Citation: Kumaramasamy v Amiri, 2023 ONLTB 65579

Date: 2023-10-04

File Number: LTB-L-074105-22

In the matter of: Main Floor, 14 Hogan Drive
Scarborough Ontario M1G2H2

Between: Inpanesan Kumaramasamy Landlord

And

Lima Amiri Tenants Mohammad Baseer Yousaf-Zai

Inpanesan Kumaramasamy (the 'Landlord') applied for an order to terminate the tenancy and evict Lima Amiri and Mohammad Baseer Yousaf-Zai (the 'Tenants') because the Tenants did not pay the rent that the Tenants owes (L1 Application).

The Landlord also applied for an order to terminate the tenancy and evict the Tenants because the Landlord believes that the Tenant abandoned the unit; the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant; and wilfully caused undue damage to the premises (L2 Application).

Both applications were heard by videoconference on June 1, 2021, November 16, 2021, April 29, 2022, August 25, 2022, May 17, 2023, and July 21, 2023. The Landlord, and the Tenants attended the hearing. The Landlord's wife, Y. Inpanesan (YI), also attended the hearing and gave evidence on behalf of the Landlord.

The Landlord's Legal Representative R. Mahavalirajan, represented the Landlord on the various hearing dates except for July 21, 2023 when J. Zhu appeared as the Landlord's Legal Representative.

The Landlord withdrew the L2 application and all claims regarding the costs of unpaid utilities.

Determinations:

1. The Landlord 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. The Tenants were in possession of the rental unit on the date the application was filed.
3. The Tenants vacated the rental unit on September 15, 2021. Rent arrears are calculated up to the date the Tenants vacated the unit.
4. The lawful rent was \$1,700.00. It was due on the 15th day of each month.
5. The Tenants have paid \$10,200.00 to the Landlord since the application was filed.
6. The Landlords gave the Tenants a credit of \$1,700.00 for the month of April 2020. This amount represents the cost the Tenants incurred for the treatment of the unit on December 14, 2019.

Section 82 Issues

7. The Tenants raised multiple issues pursuant to section 82 of the Act:

Washing machine

8. On May 9, 2020, there was an error code in the washing machine which was newly purchased by the Landlord. The Tenants contacted the manufacturer who fixed it on May 23, 2020.
9. On May 23, 2020, the Landlord received an email from the Tenants informing them that service was no longer required.
10. Based on all the evidence, I am not satisfied that the error code prevented the Tenants from using the washing machine and they successfully got the manufacturer to fix the issue within a reasonable time.

Dishwasher

11. The dishwasher started leaking on August 18, 2019 when the Landlord was informed. The Tenant claimed the issue was not resolved and as far as they knew, the Landlord did not repair it. The Landlord provided a picture of a technician in the unit, fixing the dishwasher. In any event, this incident occurred over a year before the filing of the Landlord's application on December 10, 2020.
12. The Tenants confirmed sending an email on January 6, 2021, to the Landlord stating that the dishwasher was fixed. However, they claimed it started to leak again and caused the female Tenant to slip and damage the door of the dishwasher.
13. The Landlord maintained that the dishwasher was properly fixed and the Tenant subsequently broke the door.
14. The Tenants have not provided sufficient evidence to demonstrate that the Tenant's fall was caused because of water leakage from the dishwasher after it was repaired.

Porch Steps

15. The tiles on the front porch steps were out of place and although the Landlord originally fixed two tiles in the summer of 2020, three others had a problem the Landlord was informed of on July 18, 2020 and it was not fixed. The emails from the Tenants to the Landlord states that the tiles had come loose.
16. The Landlord noticed the tiles were removed by the Tenants and placed against the wall and following a complaint in September 2019, hired a technician to fix it on September 4, 2019. On September 24, 2019, the tiles were repaired after the Tenants removed them again. The Landlord fixed the tiles a third time in November 2019, following the Tenant's complaint to the city. The Tenants again removed the tiles on May 27, 2020.
17. Based on all the evidence, the pictures provided by the Landlord showed that by May 27, 2020, the tiles were again removed by the Tenants and placed against the wall. Although the Landlord did not provide any evidence to show it was again repaired at that time, the Tenants' email from July 18, 2020 leads me to the conclusion that it was.
18. Following the complaint on July 18, 2020, it is unclear what steps the Landlord took to fix the problem and I am not satisfied that the Tenants removed the tiles while they were intact. While the Tenants removal of the tiles is not condoned, the repeated problem with the tiles should have caused the Landlord to either change repair persons or seek a different solution. The Tenants will be awarded a rent abatement of 1% or \$17.00 monthly for a period of 14 months from July 18, 2020 to September 15, 2020, totaling \$238.00.

Backyard

19. The backyard was unusable because of broken down trees which were removed by the city in the summer of 2020. The grass is usually overgrown and the Tenants were forced to contract someone to carry out the maintenance. In the summer of 2019, the Landlord began to hire people to do the work. The Tenants provided a picture of overgrown grass in the summer of 2021.
20. There is also garbage in the backyard attracting raccoons, who knocked the bins and moved the garbage around, because the Tenants threw out excess amount of food when their fridge broke down. The Landlords were informed about the garbage on July 7, 2020 and the Landlord told them to do the cleaning and dispose of the garbage properly.
21. According to the Landlord, the Tenants placed junk in the backyard and caused a mess. They also failed to maintain the lawn which was part of their responsibility as agreed by the parties. In an order dated October 22, 2019, the Landlord was informed it was their responsibility and they began the maintenance themselves. Once in 2021, they were unable to cut the lawn because they were sick.
22. Based on all the evidence, I find it more likely than not that the Tenants improperly disposed their garbage and they confirmed in their testimony that they threw out an unusually large amount of food, which likely attracted the raccoons. The Landlord was not wrong in directing the Tenant on the proper disposal of garbage in the residential complex.

23. The picture provided by the Tenant on the state of the backyard showed it was unkempt and overgrown. Although this was one instant where the Landlord claimed they were unable to perform their duties due to an illness, they could have hired someone to do the job. The Tenants are entitled to a rent abatement of 2% or \$34.00 for one month, for the Landlords lack of maintenance of the lawn.

Eavestrough

24. The eavestrough leaks unto the stairs causing damage and slippery ice. The Landlord claimed they hired someone to clean the eavestrough and no repairs were required in May 2020.

25. I am not satisfied that there was a problem with the eavestrough that was not rectified by the Landlord.

Air conditioner

26. On May 22, 2020, the Tenants complained about the central air conditioner but as it was not fixed by the Landlord, the Tenants obtained an air conditioner, for which they requested reimbursement for the cost. In June or July 26, 2021, they also purchased an additional air conditioner because the Landlord told them the first one was causing damage to the vent.

27. According to the Landlord, the Tenants have access to and control of the thermostat. On May 27, 2020 and August 7, 2020, the Landlord sent technicians and kept a video of them working on the air conditioner. On August 7, 2020, the technicians inspected the furnace in the basement but the Tenants did not allow entry into the rental unit. The Tenants peaked through the windows and laughed as the technician knocked and waited to be let in.

28. The Landlord asserted, when the Tenants denied having a key to the thermostat, that the Tenant broke the lock, it got fixed by the Landlord but they broke it again and have access. The Landlord provided as evidence, an invoice of a service call for the air conditioner on July 22, 2020.

29. Based on all the evidence, I am satisfied that following the Tenants' complaints about the air conditioner, the Landlord sent technicians to the unit to inspect and fix the issue as demonstrated by the Landlord's video and invoice. The Tenants stated that they would not know if the Landlord sent a technician on May 27, 2020 but provided no evidence to support the claim that the problem persisted. With regards to the invoice dated July 22, 2020, the Tenants' evidence contains a text message from the Landlord informing the Tenants that the technicians inspected the system in the basement but had no need to enter the rental unit.

Refrigerator

30. On July 7, 2020, the Tenants complained about the refrigerator to the Landlord who asked them to unplug and plug it back. The Landlord sent two technicians and eventually delivered a new fridge to the unit on August 1, 2020.

31. On December 31, 2020, there was an issue with the freezer of the new refrigerator which the Tenants complained about. The Landlord responded to the complaint on January 2, 2021, battled the manufacturer and eventually getting a replacement for the Tenants on January 29, 2021.
32. The Landlord confirmed purchasing the new refrigerator for the unit on August 1, 2020 but due to the pandemic, could not immediately get repairs or replacement until January 29, 2021.
33. The Ontario Court of Appeal, in its decision in *Onyskiw v. CJM Property Management Ltd 2016 ONCA 477* (CanLII), sets out a new context for analysis of alleged breaches of a landlord's duty to maintain and repair a unit. The Court of Appeal rejected the idea that any service interruption amounts to an automatic breach of the Act. Instead, the Court urged the Board to make a "contextual analysis" in each case, looking at all the facts before finding that a Landlord breached the Act. As part of this analysis, the Court directed the Board to look at the essential nature of a tenant's complaints and what steps, if any, were taken by the landlord.
34. Based on all the evidence, for a complaint made on July 7, 2020, a new refrigerator was ordered and delivered to the unit by August 1, 2020. Following a complaint about the new unit on December 31, 2020, the Landlord responded and obtained a replacement refrigerator on January 29, 2021. The Landlord acted within a reasonable time to rectify the issues in both instances.

Illegal Entry

35. On August 1, 2020, the Landlord, in the company of two delivery people who knocked on the door of the unit aggressively, requested entry to deliver a refrigerator. The male Tenant asked for five minutes to get dressed as he just got out of the shower but one of the delivery people threatened to smash his face if the door was not opened. The Tenants opened the door, and the delivery man continued to yell at the Tenants as they delivered the refrigerator. The Tenants contacted the police but by the time they arrived, the delivery person was gone. The Tenants sent an email to the Landlord on August 3, 2020, detailing the incident.
36. The Landlord served a Notice of Entry each time they required an inspection or to conduct repairs but the Tenants are not always cooperative and they were always 'in the shower.' Prior to August 1, 2020, the Tenants were given a Notice of Entry via email about the delivery.
37. Based on all the evidence, the situation as described does not constitute an illegal entry when the Tenants allowed the Landlord and the delivery men into the unit. In the Tenants' retelling of the event in the email of August 3, 2020, the Landlord did not condone the behaviour of the delivery person as he held him back.

Heat

38. On April 15, 2020, the Landlord turned off the heat and when the Tenants contacted the Landlord, the Landlord's wife asked about the rent. In a recording of a part of the

conversation played at the hearing, the Landlord's wife asked for the rent, the Tenants said they would not pay that month, and she responded, "*first pay rent and I'll take care of it.*"

39. The Tenants contacted the city to make a complaint but the city did not attend the unit until two weeks later, April 29, 2020 due to the pandemic. They promised to speak with the Landlord who did not turn the heat back on until the fall of 2020.
40. On other dates, March 16, 2020, May 16, 2020, July 26, 2020, August 26 and 27, 2020 and October 1 and 15, 2020, the Landlord deliberately turned the power off in the unit over their anger about the Tenants' leaking air conditioner. On these dates, there was no interruption in the supply of electricity to the lower unit occupied by another resident. The Tenants acknowledged asking the Landlord to reset the breakers in an email on May 16, 2020 because a section of the unit had no power.
41. The Landlord denied turning off the heat. Following an email from the Tenant to the Landlord's previous representative on April 16, 2020, the Landlord contacted the resident in the basement unit to check if the heat was working and also attended the unit to confirm that it was. The Landlord acknowledged asking if the monthly rent were paid but did not mean she would not take care of the issue until the rent was paid. The city contacted the Landlord on April 16, 2020 and were informed that the heat was on.
42. The Tenant's complaint on May 2, 2020 was over a blown fuse in the kitchen and the basement resident usually resets the breakers if the power goes off as was done on May 11, 2020. The city subsequently inspected the unit and all issues regarding the breakers were resolved by January 14, 2021.
43. Section 4(1) of O. Reg. 516/06 of the Act states September 1 to June 15 is prescribed as the part of the year during which heat is a vital service and that heat shall be provided so that the room temperature at 1.5 metres above floor level and one metre from exterior walls in all habitable space and in any area intended for normal use by tenants, including recreation rooms and laundry rooms but excluding locker rooms and garages, is at least 20 degrees Celsius.
44. Based on all the evidence, I find it highly unlikely that from April 15, 2020, the Tenants had no heat in the unit until the fall of 2020. While the Landlord's wife clearly made the statement that they will take care of the issue only when the Tenants paid the rent, no evidence was provided to support the Tenant's claim. Hence, I prefer the evidence of the Landlord that they attended the unit on April 16, 2020 and confirmed that the heat was on.
45. I also find on a balance of probabilities that while there was a problem with the circuit breakers that sometimes required it to be reset, there is no evidence to support the claim that the Landlord deliberately turned off the power in the unit at anytime.

Harassment

46. On September 4, 2020, the Landlord told the Tenants where to place their garbage in the residential complex but stated that they did not care when the Tenants had raccoon problems a few months later. The Landlord's wife also went through personal documents placed on

top of the refrigerator, in search of the refrigerator manual on a date between July 7, 2021 and August 1, 2021, when it was requested by the technicians.

47. The Landlord denied the claim of harassment saying that she was harassed by the Tenants on May 27, 2020, when they yelled at her to get out because she did not have a proper mask and told her to go back to her country.
48. Based on all the evidence, I do not find the Landlord harassed the Tenants when they directed them to clean the backyard or when his wife searched for the manual on top of the refrigerator. The unauthorized search took place in front of the Tenants and there is no evidence to demonstrate that it was a repeated conduct that could rightly be termed harassment.

Illegal Eviction

49. On September 15, 2021, while the Tenants were in the process of moving out of the unit, they were illegally evicted by the Landlord who prevented them from removing the remainder of their items without the police. The male Tenant stated that he returned to the unit to remove other items and found them outside and the police informed him that the Landlord changed the locks.
50. The Landlord provided as evidence, a video of the police walking through the unit, vacant and devoid of belongings. I am satisfied from the video that the Tenants removed all their items from the unit and were not illegally evicted. In addition the police report of the incident categorically stated, "*CLEARED UNIT, TENANTS HAVE VACATED.*"
51. Based on the foregoing, the Tenants have largely failed to demonstrate that the Landlord neglected their responsibility pursuant to section 20 or 22 of the Act. The Landlord responded to the Tenants' complaints as evidenced by the large amount of evidence provided by the parties. The Tenants raised the issues under section 82 of the Act mostly in an attempt to mitigate the consequences of their failure to pay the monthly rent as it came due.
52. The Tenants are entitled to an abatement of rent, totalling \$272.00 for the loose porch tiles and overgrown grass.
53. The rent arrears owing to September 15, 2021 are \$15,300.00. This amount was not disputed by the Tenants, who simply sought an abatement of rent.
54. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
55. The Landlord collected a rent deposit of \$1,700.00 from the Tenants and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.
56. Interest on the rent deposit, in the amount of \$68.00 is owing to the Tenants for the period from February 15, 2018 to September 15, 2021.

It is ordered that:

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2023 ONLTB 65579 (CanLI)