



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

Citation: Lewak v Azra, 2023 ONLTB 54957

Date: 2023-09-08

File Number: LTB-L-066949-22

In the matter of: Unit 69, 2651 Aquitaine Avenue
Mississauga Ontario L5N1V5

Between: Francine Lewak
Nicolas Lewak

And

Amy H Azra
Bobbie Dilawar Unnisa



Landlords

Tenants

Francine Lewak and Nicolas Lewak (the 'Landlords') applied for an order to terminate the tenancy and evict Amy H Azra and Bobbie Dilawar Unnisa (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on May 25, 2023. The first named Landlord, their legal representative, P. Balatidis, and the first named Tenant attended the hearing.

Determinations:

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. The Tenants were in possession of the rental unit on the date the application was filed.
3. The Tenants vacated the rental unit on July 14, 2021. Rent arrears are calculated up to the date the Tenants vacated the unit.
4. The lawful rent is \$2,450.00. It was due on the 1st day of each month.
5. The parties agree that the rent arrears to July 14, 2021 are \$1,527.80. This amount is calculated by deducting the last month's rent deposit from the total arrears outstanding, interest on the deposit, payments made by the Tenants, and a credit of \$258.20 the Landlords agreed to compensate the Tenants for their issues pertaining to section 82 of the Act.

PRELIMINARY & TENANT ISSUES:

6. Section 82 of the Act provides that on a landlord's application for arrears of rent the Board shall permit the tenant to raise any issue that could be the subject to an application made

by the tenant under this Act. The Tenants raised the following issues pursuant to section 82:

- light, garage door opener, shower head
- mice
- issue pertaining to the stove
- door lock

7. The parties agreed to compensate the Tenants \$258.20 in satisfactory of the following issues:

- the light,
- garage door opener, and
- shower head

Mice:

8. In preparation for the upcoming hearing, the Tenants filed with the Board and served on the Landlords the Board's requisite form for doing such. Unlike for other issues named in the form, the Tenants inform the Landlords and the Board what it is they were seeking in terms of remedy and a specific amount. On the line with respect to the mice infestation they do not.
9. The reason why identifying the remedy you are seeking is important is so that the Landlords can understand the case being made against them and so the Landlords can properly prepare a defence. Since this was not done, this issue with respect to the application is dismissed.

Stove & Door Lock:

10. The main two issues that the Tenants raised pursuant to subsection 82 of the Act relate to a stove and a door lock for the front of the door. The Tenants assert that there was an agreement between them and the Landlords where the Landlords agreed to buy back these two items that the Tenants had purchased when they vacated the rental unit. The Landlords' position was that there were no such agreement and that these were betterments that the Tenants purchased while living in the rental unit.
11. The Landlords also raised a preliminary issue with respect to these two issues being outside of the Board's time limitation to hear these issues. For the following reasons, I disagree.
12. Section 29(2) of the Act states that no tenant application may be made more than one year after the day the alleged conduct giving rise to the application occurred. The Landlords submit that the Tenants are out of time to raise these issues as it was more than one year since the Tenants purchased the items. Although, I agree with the Landlords that the items were purchased more than one year prior to the Tenants raising it as an issue- the Tenants purchasing the items were not the issue at hand. The Tenants were claiming that the Landlords agreed to buy back the purchased items when the Tenants vacated the unit and so I find the triggering event was when the Tenants vacated the rental unit and the

Landlords did not reimburse the Tenants for these items. As such, I find that the issues are raised in time and in accordance with Section 29(2) of the Act.

13. The first issue to be determined with respect to both items is was there an agreement between the parties that the Landlords would reimburse the Tenants once they vacated the rental unit. It is therefore, the Tenants burden to lead sufficient evidence to establish that it is more likely than not that this is the case. Based on the evidence and submissions educed at the hearing I do not find that the Tenants have met their burden.
14. I say this because the Tenants supplied a text message exchange between them and the Landlords whereby the Landlords specifically state to the Tenants that they “may” buy the lock back from the Tenant.
15. With respect to the stove, the Tenants did not produce a written document to support there was an agreement, there was a video recording of the move out inspection whereby the female Landlord specifically informs the Tenants that she had no knowledge of an agreement to buy back the stove.
16. I do not find that there was an agreement between the parties. I find that it is more likely than not that these items were property of the Tenants, and they could have taken them with them when they vacated the rental unit. Therefore, the Tenants’ claims for reimbursement of these items is dismissed.

It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated as of July 14, 2021, the date the Tenants moved out of the rental unit
2. The Tenants shall pay to the Landlords \$1,527.80. Which represents the amount the Tenants owe the Landlords for rent arrears owing up to the date the Tenants moved out of the rental unit.
3. If the Tenants do not pay the Landlords the full amount owing on or before September 19, 2023, the Tenants will start to owe interest. This will be simple interest calculated from September 20, 2023 at 6.00% annually on the balance outstanding.

September 8, 2023
Date Issued



Curtis Begg
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.