



Order under Section 69 Residential Tenancies Act, 2006

Citation: KIPPS LANE PROPERTY MANAGEMENT INC. v Vandreda, 2023 ONLTB 59566

Date: 2023-08-31

File Number: LTB-L-066508-22

In the matter of: 56 BRIDLE PATH
LONDON ON N5Y4S4

Between: KIPPS LANE PROPERTY MANAGEMENT INC. Landlord

And

Casaundra Vandreda and Benjamin Huguenin Tenant

KIPPS LANE PROPERTY MANAGEMENT INC. (the 'Landlord') applied for an order to terminate the tenancy and evict Casaundra Vandreda and Benjamin Huguenin (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

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

The Landlord's representative S. Labadie and the Tenant Benjamin Huguenin attended the hearing.

Determinations:

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 \$1,875.55. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$61.66. This amount is calculated as follows: \$1,875.55 x 12, divided by 365 days.
5. The Tenant has paid \$8,324.88 to the Landlord since the application was filed.
6. The rent arrears owing to July 31, 2023 are \$1674.95. This amount was not disputed by the Tenant.

7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$1,049.32 from the Tenant 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 \$24.68 is owing to the Tenant for the period from February 1, 2022 to July 19, 2023.

Section 82

10. Section 82 of the Act permits the Tenant to raise any issue that could be the subject of an application provided certain notice requirements are met.
11. The Tenant alleges there was no heat in or around mid-September 2022 through to November 2022 and there was insufficient hot water in the rental unit in or around November 2022. The Tenant testified the hot water was “*off and on*” and at times, the temperature was only “*lukewarm*”. It was the Tenant’s evidence the lack of heat and insufficient hot water was the result of a boiler issue and the Tenant seeks a rent abatement and reimbursement for a space heater.
12. The Landlord acknowledges there were temporary heat and hot water issues, both of which were addressed promptly after being notified. The Landlord produced multiple plumbing invoices from October 2022/early November 2022 in support of the actions taken by the Landlord to resolve the heat issue, and responded the heat issue could not have been rectified immediately due to a needed part. In the meantime, the Landlord indicated the Tenant was offered a space heater, which was denied. With respect to the hot water issue, the Landlord noted one of the hot water tanks was working intermittently in December 2022 and that the Landlord was advised of this issue by the Tenant on December 21, 2022. The Landlord testified the hot water heater was repaired thereafter on January 3, 2023 and produced an invoice dated January 11, 2023 in support of the action taken.
13. In *Onyskiw v. CJM Property Management Ltd.*, [2016 ONCA 477](#) (“Onyskiw”), the Court of Appeal for Ontario rejected the position that a landlord is automatically in breach of its obligation to maintain and repair under [subsection 20\(1\)](#) as soon as an interruption in service occurs or the unit is in need of repair. The Court found that the reasonableness of landlord’s response and conduct to the maintenance issue(s) is a factor in deciding breach and/or remedy and that this is consistent with the Board’s Interpretation Guideline #5. The onus to prove this allegation rests with the Tenant and given the Tenant’s somewhat vague testimony as to timing and impact of the heat and hot water issues raised, I do not find the Tenant has established a breach on a balance of probabilities.

14. Lastly, the Tenant alleges there is a 2ft X 8ft back yard area patch which consists of mud/dirt, leaving it unusable. Previously, there was asphalt located in this area and at the request of the Tenant, this area was “ripped up” by the Landlord. The Landlord denies being advised of this issue by the Tenant previously and the Tenant did not produce any pictures of the backyard area to show the nature of the alleged interference. In the circumstances, I find there is insufficient evidence presented to determine a breach has been established. This claim is accordingly, dismissed.

Section 83

15. Section 83 requires that I consider all the circumstances, including the Tenant’s and the Landlord’s situations to determine if it would be appropriate to grant section 83 relief from eviction. The Landlord seeks a section 78 payment plan order. The Tenant seeks to remain in the rental unit and indicated both tenants are employed. The Tenant sought a repayment plan of no more than \$150-\$200/month.
16. 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 to the Landlord \$1,860.95 for arrears of rent up to July 31, 2023 and costs.
2. The Tenant shall pay to the Landlord the amount set out in paragraph 1 in accordance with the following schedule:
 - (i) Between September 15, 2023 and May 15, 2024, the Tenant will make payments towards the arrears in the amount of \$200 each month. These arrears payments will be made on or before the 15th day of each month. This means that the Tenant will make payments of \$200.00 per month for 9 consecutive months, commencing September 15, 2023;
 - (ii) The final payment will be in the amount of \$60.95 and will be paid on or before June 15th, 2024.
3. If not already paid, the Tenant shall pay the monthly rent for August 2023 and September 2023, on or before September 15, 2023.
4. The Tenant shall also pay to the Landlord new rent on time and in full as it comes due and owing for the period October 1, 2023 to June 1, 2024, or until the arrears are paid in full, whichever date is earliest.
5. 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

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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 July 31, 2023.

August 31, 2023

Date Issued

Peter Nicholson

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.

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