



Order under Section 69 Residential Tenancies Act, 2006

Citation: Precise Pro Customs Inc v Ashby, 2023 ONLTB 57425

Date: 2023-08-23

File Number: LTB-L-062666-22

In the matter of: #2, 138 GRADWELL DR
Toronto ON M1M2N2

Between: Precise Pro Customs Inc Landlord

And

Terry Ashby Tenant

Precise Pro Customs Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Terry Ashby (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on June 6, 2023.

The Landlord, the Landlord's Representative L. Mendonca and the Tenant 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 \$1,950.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$64.11. This amount is calculated as follows: \$1,950.00 x 12, divided by 365 days.
5. The Tenant has paid \$6,550.00 to the Landlord since the application was filed.
6. The rent arrears owing to June 30, 2023 are \$11,000.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

8. The parties agree that the Landlord collected a rent deposit of \$2,420.00 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 \$81.55 is owing to the Tenant for the period from January 31, 2022 to June 6, 2023.

Section 82 issues raised by the Tenants

10. The Tenants wished to raise a number maintenance issues pursuant to section 82 of the *Residential Tenancies Act, 2006* (“Act”). She claims that the evidence was sent by courier to the Board 8 days prior to the hearing. It appeared on the LTB’s portal on May 30, 2023, which is 7 days prior to the hearing. The Landlord’s Representative objected on the basis that the Tenants; issues and the evidence was not provided at least 7 days before the hearing as required section 82(2) of the Act and LTB Rule of Procedure 19.4.
11. I allowed the section 82 issues to proceed. The Tenants have a right to raise these issues and I find that the Landlord likely had the Tenant’s evidence at least 7 days in advance of the hearing.
12. The Tenants raised the following maintenance issues:
 - broken appliances;
 - work inside & outside of unit;
 - kitchen sink;
 - flood in basement;
13. The Tenants have the burden of proving these allegations on a balance of probabilities.
14. The Tenants allegations concern maintenance issues. Section 20(1) of the *Residential Tenancies Act, 2006* (the “Act”) states:

A landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards.

15. In *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477, the Court of Appeal held that the LTB should take a contextual approach and consider the entirety of the factual situation in determining whether there was a breach of the landlord’s maintenance obligations, including whether the landlord responded to the maintenance issue reasonably in the circumstances. The court rejected the submission that a landlord is automatically in breach of its maintenance obligation as soon as an interruption in service occurs.

Broken Appliances

16. The Tenant asserted that the washer and dryer stopped working on June 28, 2022. They claim that they told the Landlord the same day but it is still not resolved.

17. The Landlord asserts that it was just the dryer that stopped working. There is a \$500.00 deductible in the lease for repairs and the Tenant refused to pay it. The Landlord did concede that the dryer is included under the lease. The Tenant did not dispute the Landlord' claim that it was only the dryer that was not working.
18. While the lease purports to make the Tenants responsible for the first \$500.00 of repairs, that term is void and unenforceable because it is contrary to the Act. Under section 20(1) of the Act, it is the responsibility of the Landlord to provide the service and pay for all needed repairs. Therefore, the Landlord is in breach of section 20(1) by failing to fix the dryer
19. I am granting the Tenant an abatement equal to 5% of the rent for the 12 month period, July 2022 to June 2023. This abatement totals \$97.50 x 12 months, for a total of \$1,170.00. I am selecting this amount because I believe that it reflects the loss of an important service to the Tenant. They had to find alternate means of drying their clothing. Given that this is a requirement under the lease, to have gone this long without the dryer demonstrates bad faith on the part of the Landlord.
20. I am also ordering that the Landlord fix or replace the dryer.

Work Inside & Outside of Unit

21. The Tenant asked for a rebate for work they did inside and outside of the unit. The work done was aesthetic in nature. These are tasks that are basic to any tenancy. The Tenant was told no by the Landlord prior to the work being done.
22. Given that the Tenant was informed that the Landlord would not given them any resources for the improvements done by them and given that it is the Tenant's responsibility to maintain the residence with regards to normal wear and tear, I am denying all claims in this area.

Kitchen Sink

23. The Tenant testified that the pipe underneath the sink leaks and they must do dishes in a bucket. The Tenant provided pictures of the sink. The Landlord was told on August 9, 2022. The Tenant says that it has not been resolved. The Landlord says that it has been fixed, but did not provide any evidence demonstrating that it had been fixed.
24. I am satisfied that the Tenant has been without a functioning kitchen sink since August of 2022. I do not accept the Landlord's assertion that it has been fixed as the Landlord did not provide any evidence or details as to when and how it was fixed. This is a significant inconvenience to the Tenant and a basic facility that the Tenant should have.

25. I am granting the Tenants an abatement equal to 25% of the rent for the 11 month period, August 2022 to June 2023. This abatement totals \$487.50 x 11 months, for a total of \$5,362.50.
26. I am also ordering that the Landlord fix the kitchen sink.

Basement Flooded

27. The Tenant testified that the basement flooded in February 2023 and it took 3 months for the Landlord to rectify the flood. They fixed the pipe, but the basement was flooded and there was mold growing in the basement. Municipal officials inspected the unit on February 13, 2023 and forced the Landlord to do the work. The final payment to the plumber was made on May 15, 2023.
28. The Landlord asserts that it was the Tenant's fault for causing the flood. They said that the Tenant failed to turn off a water line which then froze and caused the flood. They say that it has all been fixed and that it was done right away. They assert that they complied with the municipal orders. Invoices and photos were supplied that demonstrated that the Landlord fixed the issues.
29. The evidence provided by the Landlord demonstrates all of the issues surrounding the flood in the basement were resolved by the Landlord in an adequate and timely manner. Therefore, I find that the Landlord is not in breach of its obligations under section 20(1) with respect to this issue.

Denied a Roommate

30. The Landlord refused to allow the Tenant to have a roommate to help with the rent. The Tenant's daughter lived in the apartment but has moved out on her own.
31. The term in the lease purporting to prohibit the Tenant from having roommates is void and unenforceable. The Act does not give the Landlord the right to determine whether the Tenant can share the rental unit with other people. However, as presently the Tenant is not seeking to have a roommate, no remedy is required for this issue
32. The Tenant is entitled to a total abatement of rent of \$7,020.00. This amount will be deducted from the amount owing to the Landlord. This is to compensate the Tenant for things that the Landlord is required to provide, but that have not been provided.

Relief from eviction

33. 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 pursuant to subsection 83(1)(a) of the Act if the Landlord fails to comply with the requirements set out in paragraphs 17 and 22 of this order.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$8,553.50 if the payment is made on or before August 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$10,503.50 if the payment is made on or before September 3, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after September 3, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
 4. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before September 3, 2023.**
 5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$586.61. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
 6. The Tenant shall also pay the Landlord compensation of \$64.11 per day for the use of the unit starting June 7, 2023 until the date the Tenant moves out of the unit.
 7. If the Tenant does not pay the Landlord the full amount owing on or before September 3, 2023, the Tenant will start to owe interest. This will be simple interest calculated from September 4, 2023 at 6.00% annually on the balance outstanding.
 8. If the unit is not vacated on or before September 3, 2023, then starting September 4, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
 9. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after September 4, 2023.
 10. On or before August 31, 2023, the Landlord shall:
 - (a) fix or replace the dryer; and
 - (b) fix the kitchen sink so that it does not leak and can be used by the tenants for all the usual purposes

11. If the repairs ordered in paragraph 10(a) are not completed by August 31, 2023, the Tenant is entitled to a further abatement of \$97.50 per month starting on September 1, 2023 and continuing each month until the repair is completed.
12. If the repairs ordered in paragraph 10(b) are not completed by August 31, 2023, the Tenant is entitled to a further abatement of \$487.50 per month starting on September 1, 2023 and continuing each month until the repair is completed.

August 23, 2023

Date Issued

William Greenberg

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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on March 4, 2024 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.

Schedule 1
SUMMARY OF CALCULATIONS

A. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before August 31, 2023

Rent Owing To August 31, 2023	\$21,450.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$6,550.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an abatement	- \$6,532.50
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$8,553.50

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before September 3, 2023

Rent Owing To September 30, 2023	\$23,400.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$6,550.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an abatement	- \$6,532.50
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$10,503.50

C. Amount the Tenant must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$15,984.66
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$6,550.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$2,420.00
Less the amount of the interest on the last month's rent deposit	- \$81.55

Less the amount the Landlord owes the Tenant for an abatement	- \$6,532.50
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$586.61
Plus daily compensation owing for each day of occupation starting June 7, 2023	\$64.11 (per day)