



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

Citation: Sud v Gayle, 2023 ONLTB 56469

Date: 2023-08-15

File Number: LTB-L-064863-22

In the matter of: 3, 21 CONEFLOWER CRES
NORTH YORK ON M2R0A5

Between: Mohit Sud Landlords
Vishaya Naidoo

And

LeShaune Courtney Gayle Tenant

Mohit Sud and Vishaya Naidoo (the 'Landlords') applied for an order to terminate the tenancy and evict LeShaune Courtney Gayle (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes. This is the L1 Application.

The Landlords also applied for an order to terminate the tenancy and evict the Tenant because 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 the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises. This is the L2 Application.

The Landlords also applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

This application was heard by videoconference on April 4, 2023.

The Landlord, Mohit Sud, the Landlord's Legal Representative, Mark Ciobotaru, the Tenant, and the Tenant's Sobini Tharmalingham, attended the hearing.

Determinations:

L1 Application

1. The Landlords 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 \$2,700.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$88.77. This amount is calculated as follows: \$2,700.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to April 30, 2023 are \$18,900.00.
7. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlords collected a rent deposit of \$2,700.00 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 \$83.81 is owing to the Tenant for the period from July 1, 2020 to April 4, 2023.
10. The Landlords' Legal Representative submitted the Landlords are seeking a standard eviction order. He submitted the rent arrears are substantial and the tenancy is no longer viable.
11. The Tenant testified she has been withholding rent in an attempt to prompt the Landlords to address the maintenance issues in the rental unit. While she understood withholding rent is not the correct approach and added she received bad legal advice, she would like to preserve the tenancy. She proposed a repayment plan in which she would pay \$7,000.00 to the Landlord and the balance would be paid in monthly installments of \$1,007.17 for a period of twelve months.
12. The Landlords' Legal Representative was opposed to the Tenant's proposal stating the Tenant has been withholding the monthly rent and therefore the funds should be available to provide to the Landlord promptly. He reiterated the rent arrears are substantial and the Landlord has not received any monies from the Tenant since September 2022.

Section 82 issues

13. At the hearing, the Tenant sought to rely on section 82 of the *Residential Tenancies Act, 2006* (the 'Act') and intended to raise maintenance issues under section 20 of the Act. During the cross-examination of the Landlord, the Tenant stated she had filed a T6 application with the Board addressing the same issues that she has raised under section 82. I asked the Tenant if she intended to proceed with the filed T6 application or withdraw the T6 application and raise the issues under s.82 of the Act for the Landlords' application before me. The Tenant informed the Board that she does not want to withdraw her T6 application and therefore, the maintenance issues filed under s. 82 of the Act were not considered.

L2 Application

14. The N5 notice of termination ('N5 Notice') underlying the L2 application was deemed served on the Tenant on October 19, 2022, and clearly identified the details of the Landlord's agent's findings from the rental unit inspections conducted on July 17, 2021 and in August 2022. Specifically, the damages are to the bathtub and bathroom counter and sink in the ensuite bathroom. The Landlords are also seeking compensation for their insurance deductible for water damage caused by the Tenant tampering with the washing machine. The N5 notice claims the Tenant has substantially interfered with the Landlords' lawful rights, privileges, and interests and further claims \$6,593.50 in undue damage.

Bathtub Damage

15. Section 34 states a tenant is responsible for the repair of undue damage to the rental unit or residential complex caused by the wilful or negligent conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant.
16. In his testimony, the Landlord stated after the inspection on July 17, 2022, damage to the bathtub in the ensuite bathroom was discovered. He stated he spoke to the Tenant, who admitted she had caused the damage, and told him she would get the damage repaired.
17. The Landlords' Legal Representative submitted a photograph of the damage to the bathtub as evidence. This photo shows an area of the bathtub where the finish has been removed. He also submitted a series of emails between the Landlord and the Tenant as evidence. In these emails, dated July 22, 2022 and July 24, 2022, the Tenant admits to the damage and expresses her intentions to get it repaired.
18. The Landlord testified the Tenant did not effect the repair and therefore he contacted two companies to provide him with quotes to repair the damage. Two estimates were provided as evidence by the Landlord's Legal Representative. These quotes included the cost to

reglaze the bathtub and repair the bathroom counter and sink. The Landlord relies on the second quote from Black Cedar Homes as it is the lower of the two quotes.

19. In her testimony, the Tenant admitted she was responsible for the damage to the bathtub but stated the bathtub is still usable and, in her opinion, the damage is not significant. She added no further damage has occurred.
20. Based on the evidence and submissions, I am satisfied the Tenant caused undue damage to the bathtub and as a result, is responsible for the costs incurred or will be incurred by the Landlords to repair the damage, in the amount of \$3,672.50 inclusive of H.S.T.

Bathroom counter and sink

21. In his testimony, the Landlord stated a subsequent inspection of the rental unit was conducted in August 2022. The Landlords' agent reported to him that significant damage to the bathroom counter and sink was discovered. The Landlord stated the Tenant did not inform him of the damage and therefore, he is unaware of how the damage occurred. He further stated the Tenant has not effected any repairs to the damaged bathroom counter and sink and relies on the quote from Black Cedar Homes.
22. The Landlords' Legal Representative submitted two photographs of the damaged bathroom counter and sink which shows a large crack in the marble counter which has caused the sink to shift and the caulking to detach from the bottom of the sink. No other evidence was provided to support the claim that the Tenant caused the damage.
23. The Tenant testified she is unsure of when the damage to bathroom counter occurred but stated she did not cause the damage. She conceded she did not inform the Landlords but denied any responsibility to the cause and suggested there may be a defect in the marble countertop.
24. While it was not clear how the damage occurred to the bathroom counter and sink, I am satisfied, on a balance of probabilities, that the Tenant is responsible for the cost to repair it. The Tenant did not inform the Landlords of the issue and based on the photographic evidence, the damage is clearly visible and could not be overlooked. In the absence of any documentary evidence to support the Tenant's position, I find the Landlord's testimony on this issue to be more persuasive than the Tenant's as it would make sense for the Tenant to inform the Landlord of damage that she was not responsible for as opposed to avoiding reporting it. As a result, is responsible for the costs incurred or will be incurred by the Landlords to repair the damage, in the amount of \$1,921.00 inclusive of H.S.T.

Insurance Deductible

25. The Landlord testified that on February 18, 2022, the Tenant informed him that a flood had occurred in the rental unit. He stated the Tenant tampered with the washing machine hose and incorrectly installed the hose clamp which resulted in the flood causing significant damage to the rental unit. He stated the Tenant did not advise him of any issues with the washing machine until after the flood occurred.
26. The Landlord stated he contacted his insurance company who conducted their own inspection and concluded the Tenant was liable for the damages. The Landlord learned the Tenant did not have insurance and therefore his insurance company paid out the claim to him less the \$1,000.00 deductible.
27. The Tenant testified she did not inform the Landlords of the issues with the washing machine prior to the flood as she was fixing the issue herself and did not want to keep contacting him with the same issue. She stated when the flood occurred she informed the Landlords of the problems she had been experiencing and explained she did her best to secure the hose as she had done many times before. She informed the Landlords she would contact her insurance company but stated when she learned she did not have coverage, she cancelled her policy.
28. Based on the evidence and submissions of the parties, and on a balance of probabilities, I find the Tenant has substantially interfered with the Landlords' lawful rights, privileges, and interests and is responsible to compensate the Landlords \$1,000.00 for the insurance deductible. I say this because the Tenant neglected to inform the Landlords of the issues with the washing machine and this resulted in water damage being caused in the rental unit. It is incumbent on a Tenant to inform the Landlords of maintenance issues so they can be addressed to avoid further damage from occurring.

Section 83 considerations

29. The Tenant is seeking to preserve the tenancy and proposed a repayment plan for the rent arrears and the undue damages. She stated she and her four children have lived in the rental unit since July 2020 and moving would be detrimental to her mental health. She added she has the financial means to adhere to her proposed repayment plan. In the alternative, she requested more time to find a new place to live and asked that the termination date be postponed for three to six months.
30. The Landlords' Legal Representative submitted the Landlords are seeking an eviction order and termination of the tenancy. He stated the considerable arrears have caused the Landlords financial hardship and the damages to the rental unit caused by the Tenant have substantially interfered with the Landlords' lawful rights.
31. Section 64(1) of the Act sets out

A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.

32. And section 89(1) of the Act sets out:

A landlord may apply to the Board for an order requiring a tenant or former tenant to pay reasonable costs that the landlord has incurred or will incur for the repair of or, where repairing is not reasonable, the replacement of damaged property if,

(a) while the tenant or former tenant is or was in possession of the rental unit, the tenant or former tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant or former tenant wilfully or negligently causes or caused undue damage to the rental unit or the residential complex

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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

34. I find the rent arrears are so substantial that a repayment plan would be prejudicial to the Landlords. The Tenant conceded she had been withholding the monthly rent yet she no longer has those funds to pay to the Landlords nor has she made a good faith payment to preserve the tenancy.

35. Furthermore, based on the evidence before me, I am satisfied that the Landlords have met the burden of proof to establish that the Tenant has substantially interfered with the Landlords' lawful rights, privileges by causing undue damage to the rental unit and by not informing the Landlord of maintenance issues.

36. Based on the findings above, the tenancy between the Landlord and the Tenant must be terminated.

It is ordered that:

L1 Application:

1. The tenancy between the Landlords 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 Landlords or to the LTB in trust:**
 - \$29,886.00 if the payment is made on or before August 26, 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 August 25, 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 August 26, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlords \$13,957.27. 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 Landlords owe 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 Landlords compensation of \$88.77 per day for the use of the unit starting April 5, 2023 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlords the full amount owing on or before August 26, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 27, 2023 at 6.00% annually on the balance outstanding.

L2 Application:

8. Regardless of whether or not the Tenant voids the order above with respect to non-payment of rent under paragraphs 2 or 3 of this order, the tenancy between the Landlords and the Tenant is terminated.
9. The Tenant must move out of the rental unit on or before August 26, 2023.
10. The Tenant shall pay to the Landlords \$6,593.50, which represents the reasonable costs of repairing the damage.
11. If the Tenant does not pay the Landlord the full amount owing on or before August 26, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 27, 2023 at 6.00% annually on the balance outstanding.

12. If the unit is not vacated on or before August 26, 2023, then starting August 27, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
13. 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 August 27, 2023.

August 15, 2023

Date Issued

Susan Priest

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 February 27, 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**

L1 Application

A. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before August 26, 2023

Rent Owing To August 31, 2023	\$29,700.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Total the Tenant must pay to continue the tenancy	\$29,886.00

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

Rent Owing To Hearing Date	\$16,555.08
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	- \$2,700.00
Less the amount of the interest on the last month's rent deposit	- \$83.81
Total amount owing to the Landlords	\$13,957.27
Plus daily compensation owing for each day of occupation starting April 5, 2023	\$88.77 (per day)