



Order under Section 69 Residential Tenancies Act, 2006

Citation: Brathwaite v Akpan, 2023 ONLTB 54616

Date: 2023-08-04

File Number: LTB-L-063870-22

In the matter of: PH205 (MIDDLE ROOM), 90 LING RD SCARBOROUGH
ON M1E4Y3

Between: Rosemarie Brathwaite Landlord

And

Linda Kate Akpan Tenant

Rosemarie Brathwaite (the 'Landlord') applied for an order to terminate the tenancy and evict Linda Kate Akpan (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (L1 Application) and because 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 (L2 Application).

This application was heard by videoconference on June 14, 2023.

The Landlord, the Landlord's legal representative, Linda Flores, and the Tenant attended the hearing.

The Landlord elected not to pursue the L2 Application.

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. The lawful rent is \$999.37. It is due on the 1st day of each month.

3. Based on the Monthly rent, the daily rent/compensation is \$32.86. This amount is calculated as follows: $\$999.37 \times 12$, divided by 365 days.
4. The Tenant has not made any payments since the application was filed.
5. The rent arrears owing to June 30, 2023 are \$8,921.22.
6. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
7. The Tenant raised several issues pursuant to section 82 of the Act, the most significant of which was with respect to substantial interference with reasonable enjoyment and harassment on November 3, 2022 and November 28, 2022.
8. With respect to November 3, 2022, the Tenant testified that the Landlord and the Landlord's daughter, Leah Weekes (LW), attended the residential complex at which time they yelled and screamed at the Tenant. The Tenant submitted into evidence a video of the incident which showed the Landlord and LW outside the Tenant's room in the residential complex yelling and screaming at the Tenant and her guest. The Landlord repeatedly screamed at the Tenant "get out of my house". This was a highly charged and volatile incident bordering on violence.
9. The Landlord did not meaningfully contest the Tenant's account of what happened on November 3, 2022 and conceded that she did not behave appropriately on that date.
10. I find that the Landlord harassed and substantially interfered with the Tenant's reasonable enjoyment of the rental unit on November 3, 2022 by yelling and screaming at the Tenant.
11. With respect to November 28, 2022. The Tenant testified that the Landlord and LW attended the residential complex to visit the Landlord's niece, who rented another room in the residential complex. LW started fidgeting with a power cord that belonged to the Tenant in the common area of the residential complex. The Tenant took her power cord away from LW at which time, LW grabbed onto the power cord and a struggle over the cord ensued. The Landlord subsequently entered the room, grabbed onto the cord, pushed the Tenant, and joined in the melee. During the struggle, the participants fell to the ground and the Tenant concussed her head. The Landlord bit the Tenant's hand and attempted to strangle the Tenant. The Tenant says she bit the Landlord's hand in return. The police were called. The altercation eventually subsided, the Tenant returned to her room, and the Landlord and LW went outside. When the police arrived, they spoke to the Landlord and LW first and proceeded to arrest the Tenant.
12. Although the Landlord testified that the Tenant assaulted her, she declined to provide further testimony with respect to the physical altercation. LW did not attend the hearing to provide testimony with respect to the physical altercation.
13. I found the Tenant's testimony with respect to the altercation on November 28, 2022 to be credible and straightforward. In addition, there was very little evidence from the Landlord, and no evidence from LW, to contradict the Tenant's account. As a result, I find that the

Landlord harassed and substantially interfered with the Tenant's reasonable enjoyment of the rental unit by assaulting the Tenant.

14. The Tenant also testified that upon returning home on November 28, 2022, she discovered that the Landlord had removed the door to her room. The Landlord did not replace this door and the Tenant ultimately installed her own door at an expense of \$450.00.
15. The Landlord admitted to removing the Tenant's door but said she did so because the door was damaged during the altercation. She said that it would have been unsafe to leave the door in place as there were children in the residential complex who could have been hurt by the damaged door.
16. The Tenant denied any damage to the door of her rental unit.
17. I find, on a balance of probabilities, based on the evidence before me, that there was no damage to the door. The Landlord bears the burden of proof to establish that the door was damaged and has not met this burden. In addition, I would have expected the Landlord to have obtained photographic evidence if there had been damage to the door and this was lacking. The Landlord's failure to replace the door also suggests that removal of the door was malicious.
18. As a result, I find that the Landlord harassed, substantially interfered with the Tenant's reasonable enjoyment of the rental unit, and breached her obligation to maintain the rental unit by removing the door to the rental unit.
19. With respect to the impact on the Tenant, the Tenant attended hospital after the incident on November 28, 2022 for her concussed head. The Tenant is also facing criminal charges with respect to this incident.
20. With respect to remedy, the Tenant requested that the amount she owes the Landlord be reduced by 50% and that she be compensated \$450.00 for the cost of replacing the door.
21. I find the Tenant's request for compensation to be modest in light of the incidents described above and would likely have ordered a larger amount but for the Divisional Court's decision in *Beauge v. Metcap Living Management Inc.*, [2012] O.J. No. 1052 (Div. Ct.), wherein the Court concludes that it is not open to the Board to order an amount in excess of that claimed in an application which has not been amended.
22. As a result, the Tenant is entitled to an abatement of rent of \$5,909.98. This amount will be deducted from the amount owing to the Landlord. This abatement represents 50% of the amount owed to the Landlord plus \$450.00 for the cost of replacing the door.
23. I am mindful that the Tenant raised a number of other maintenance concerns under section 82, however I did not find it necessary to consider these as the amount claimed by the Tenant was already met with respect to her claims for harassment and substantial interference with reasonable enjoyment.

24. The Landlord collected a rent deposit of \$975.00 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.
25. Interest on the rent deposit, in the amount of \$26.79 is owing to the Tenant for the period from November 1, 2021 to June 14, 2023.
26. 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 postpone the eviction until August 15, 2023 pursuant to subsection 83(1)(b) of the Act.

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:**
 - \$5,195.98 if the payment is made on or before August 15, 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 15, 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 15, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$2,106.12. 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 and the rent abatement/rebate awarded to the Tenant 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 \$32.86 per day for the use of the unit starting June 15, 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 August 15, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 16, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before August 15, 2023, then starting August 16, 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 August 16, 2023.

August 4, 2023

Date Issued

Richard Ferriss

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 16, 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 15, 2023

Rent Owing To August 31, 2023	\$10,919.96
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 the Landlord owes the Tenant for an{abatement/rebate}	- \$5,909.98
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$5,195.98

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

Rent Owing To Hearing Date	\$8,381.89
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	- \$975.00
Less the amount of the interest on the last month's rent deposit	- \$26.79

Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$5,459.98
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$2,106.12
Plus daily compensation owing for each day of occupation starting June 15, 2023	\$32.86 (per day)