



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

Citation: 2773156 ONTARIO LTD. v Queale, 2023 ONLTB 53972

Date: 2023-08-02

File Number: LTB-L-029286-22

In the matter of: 4, 1464 DUFFERIN STREET
TORONTO ON M6H2E9

Between: 2773156 ONTARIO LTD. Landlord

And

Myles Queale and Justin Pinho Tenants

2773156 ONTARIO LTD. (the 'Landlord') applied for an order to terminate the tenancy and evict Myles Queale and Justin Pinho (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe (L1).

The Landlord also applied for an order to terminate the tenancy and evict the Tenants 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.
- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully or negligently caused damage to the premises.

The Landlord further applied for an order requiring the Tenants 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 Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex (L2).

This L1/L2 application was heard by videoconference on July 24, 2023.

The Landlord's Legal Representative, M. Simaan, the Landlord's Agents, V. Flint and C. Kottoor, and the Tenants attended the hearing.

At the hearing the Tenants raised issues pursuant to section 82 of the *Residential Tenancies Act, 2006* (the 'Act').

Determinations:

1. The Landlord sought to withdraw the L2 application, the Tenants did not oppose this request.

2. Justin Pinho (JP) testified on behalf of the Tenants at the hearing. Myles Queale (MQ) opted to not testify although present during the hearing.
3. Vanessa Flint (VF), the Landlord's Agent, testified on behalf of the Landlord.

Rent Arrears

4. The Landlord 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.
5. As of the hearing date, the Tenants were still in possession of the rental unit.
6. The lawful rent is \$2,950.00. It is due on the 1st day of each month.
7. Based on the Monthly rent, the daily rent/compensation is \$96.99. This amount is calculated as follows: \$2,950.00 x 12, divided by 365 days.
8. The Tenants have not made any payments since the application was filed.
9. The Tenants did not dispute that rent arrears owing to July 31, 2023 are \$51,050.00.
10. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
11. The Landlord collected a rent deposit of \$2,950.00 from the Tenants 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.
12. Interest on the rent deposit, in the amount of \$87.73 is owing to the Tenants for the period from November 8, 2021 to July 24, 2023.

Section 82 Issues

13. There is no dispute that the Tenants submitted their issues pursuant to section 82 in writing and gave notice to the Landlord on July 17, 2023. The Landlord was prepared to address these issues at the hearing. Subsection 82(1) of the Act states the following:

At a hearing of an application by a landlord under section 69 for an order terminating a tenancy and evicting a tenant based on a notice of termination under section 59, the Board shall permit the tenant to raise any issue that could be the subject of an application made by the tenant under this Act if the tenant,

- (a) complies with the requirements set out in subsection (2); or
- (b) provides an explanation satisfactory to the Board explaining why the tenant could not comply with the requirements set out in subsection (2).

14. The Tenants raised the following issues:

- a) Stairs not built to Building Code

- b) Lack of snow and ice removal at the residential complex
- c) Shower floor tiles in disrepair
- d) Assault committed by another Tenant on the property not addressed by the Landlord
- e) Harassment, attempted illegal entry and attempted lockout of the unit by the Landlord

15. The Tenants requested the following remedies: that the outstanding maintenance issues be rectified immediately, a rent abatement off-setting the rent arrears owing and moving costs of \$4,000.00 to assist with first and last month's rent at a new unit and their costs of moving.

16. Subsection 20(1) of the Act says:

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.

17. Subsection 29(2) of the Act says:

No application may be made under subsection (1) more than one year after the day the alleged conduct giving rise to the application occurred.

18. For the reasons below, I find that the Tenants are entitled to an abatement of rent of \$1,121.00 for the shower floor tiles disrepair. This amount will be deducted from the amount owing to the Landlord. Also, I find that the Landlord shall complete the necessary repairs to the shower floor tiles on or before September 1, 2023.

Stairs not built to Building Code

19. JP stated that the stairs leading from the front door of the complex to the Tenant's unit are not at 45 degree angle as required. JP stated that the stairs have varied heights from the riser. JP stated that this has led to multiple slip and falls, in particular MQ fell in December 2021 and sustained injuries.

20. VF stated that the building was purchased in August 2020 and is approximately one hundred years old. She stated that as far as she knows the stairs were built according to Code at that time. She also stated that there is no notice or report from the City Inspector's Office that the stairs are unsafe and that she was advised in an email from the City Inspector on July 17, 2023 that the stairs are a non-issue, and he will only be inspecting the shower.

21. The evidence before me was insufficient to find that the stairs at the rental unit are not up to Building Code or Housing Standards and thus unsafe. The Tenants did not provide any evidence of what the Building Code requirement is for stairs at this residential complex. In any event, the Tenants have not established that the stairs are not up to Housing Standards or are unsafe given that the City Inspector advised the Landlord's Agent that the stairs are not an issue.

Lack of snow and ice removal at the residential complex

22. There was no dispute that the Tenants contacted the Landlord twice, once on November 29, 2021 and the second time on February 3, 2022 to complain about the lack of snow and ice removal at the property. VF stated that after receiving the complaint on February 3, 2022, she engaged a contractor to complete the snow removal at the property. VF confirmed that she has not received any complaints since then regarding this issue.
23. It has been more than one year since the Tenants complained about the lack of snow removal at the property, given this I am satisfied that the issue was resolved after February 3, 2022. In accordance with subsection 29(2), the Tenants are not entitled to make an application (or raise this issue) since it has been more than one year after the day the alleged conduct giving rise to the application occurred.

Shower floor tiles in disrepair

24. JP stated that throughout the tenancy there has been an issue with the shower floor tiles. JP provided photographs depicting the grout around the floor tiles and where the floor tiles meet the wall tiles has significantly deteriorated. The photographs also showed that individual floor tiles have lifted and/or are missing.
25. JP provided a copy of a text message dated January 7, 2022 to the Landlord to report this issue. There was no dispute that the Landlord's contractor and VF attended the rental unit on January 8, 2022 to inspect the shower area.
26. VF stated that the shower was re-tiled in October 2021 prior to the Tenants moving into the unit. VF also stated that the shower in another unit was re-tiled at the same time and there are no issues with the shower floor tiles in that unit. VF further stated that she did not understand why the tiles were broken and missing, she suspected that the Tenants were using some sort of chemical in the shower.
27. There is no dispute that the shower floor tiles were never repaired after the landlord was made aware of the problem. VF stated that she attempted to contact the Tenants after January 8, 2022 but received no response to confirm access to the unit. There was no dispute that the Tenants reached out again to the Landlord on March 13, 2022 regarding this issue, yet there was still no repair effected.
28. Based on the evidence before me, I am satisfied that the shower floor tiles remain in disrepair. Therefore, I find that the Landlord failed to meet the Landlord's obligations under subsection 20(1) of the Act.
29. Abatement of rent is a contractual remedy on the principle that if you are paying 100% of the rent then you should be getting 100% of what you are paying for and if you are not getting that, then a tenant should be entitled to abatement equal to the difference in value. In other words, an abatement of rent can be viewed as compensation to the tenant for the inadequate state of repair and any inconvenience or actual loss of use of the rental unit.
30. In determining the amount of an abatement of rent, I have to consider the impact on the Tenants. I find that the Tenants are entitled to a 2% ($\$2,950.00 \times 0.02 = \59.00) abatement for 19 months (January 2022 to July 2023) which amounts to $\$1,121.00$ ($\$59.00 \times 19$). I considered the length of time the Landlord has known about the issue, the Tenants cooperation in providing access to the rental unit, and the impact of this disrepair on the

Tenants. The Tenants did not lead any evidence that they were not able to use the shower. It was also not disputed that the Tenants placed other tiles over the broken and missing tiles.

Assault committed by another Tenant

31. JP stated that in November 2022, MQ was assaulted by another tenant in the building. The police were contacted and were given the Landlord's information to find out the name of the other tenant. JP states that their issue is that the Landlord did not provide the police the information that was necessary for them to pursue assault charges.
32. VF stated that she did in fact speak with a police officer regarding this matter and provided the necessary information. VF also stated that she received a complaint from the other tenant stating that they were assaulted by MQ.
33. Based on the evidence before me I am satisfied that the Landlord's Agent cooperated with the police regarding this issue. The evidence before me was insufficient to find that this alleged assault was not addressed by the police as a result of the Landlord's conduct. The other tenant continues to reside in the residential complex, therefore the police know where to find them.

Harassment, attempted illegal entry and attempted lockout of the unit by the Landlord

34. JP stated that they received a letter from the Landlord's Legal Representative stating that they are there illegally and not who they say they are. JP stated in this letter the Landlord threatened to enter the unit and change the locks. JP relied on an email dated March 31, 2023 to the Landlord's Legal Representative from MQ responding to this letter.
35. VF stated that they needed to change the lock as the Landlord does not have access to the unit. VF stated that they need access as there were four floods in the unit below and they have been unable to access the Tenants unit to determine the cause/origin.
36. There was no dispute that the Landlord's Agent was aware that the Tenants had placed their own lock on the rental unit. The Tenants' lock is a keypad. JP submitted that they sent the Landlord the code previously. However, there was no dispute that the Tenants sent the Landlord's Agent the code approximately a half hour before she attended the unit as advised in the letter.
37. The evidence before me was insufficient to find that the Landlord's letter (email) amounted to harassment and/or a threat. A copy of this letter (email) was not provided by the Tenants into evidence. Based on MQ's response to the letter and the Landlord's Legal Representative's response to MQ's email, I am satisfied that the Landlord's letter was simply seeking clarification as to whether or not the Tenants still resided in the unit, providing legal notice that the Landlord will be inspecting the unit on a certain date, and advising the Tenants if the Landlord could not gain access on that date then the locks may be changed to provide access.
38. Given VF's testimony and the fact that the Tenants did not provide the access code to their unit in the response emails, I am satisfied that the Landlord did not have the Tenants'

access code for the rental unit. The Landlord only received the access code a half hour prior to the scheduled inspection.

39. In summary, based upon the section 82 issues raised by the Tenants, I find it reasonable to grant a rent abatement solely for the disrepair of the shower floor tiles to the Tenants.

Monetary Jurisdiction

40. The amount claimed by the Landlord exceeds the monetary jurisdiction of the Board. Section 207(1) of the Act limits the monetary jurisdiction of the Board to that of the Small Claims Court. At this time that amount is \$35,000.00.
41. The Landlord was advised of this limitation and the Landlord's Legal Representative agreed to waive any amount that exceeds the Boards' monetary jurisdiction. The Landlord was also advised of section 207(3) of the Act which states if the party allows the Board to proceed and order any amount up to the maximum amount that party extinguishes the right in excess of the Board's monetary jurisdiction. The Landlord's Legal Representative acknowledged this and agreed to allow the Board to determine the amount, if any, that is outstanding and issue an order accordingly.

Relief from Eviction

42. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, and find that it would not be unfair to postpone the eviction until August 31, 2023 pursuant to subsection 83(1)(b) of the Act.
43. JP requested 3-4 months to vacate the rental unit. JP stated that they have no intention of staying here and have been looking for another unit, but it has been difficult to find suitable accommodation for MQ given his limited mobility issues. JP stated that he works full-time, however due to MQ's multiple falls, MQ is currently out of work, and they are trying to get back up to speed.
44. The Landlord's Legal Representative submitted that the Tenants have had sufficient time to find alternate accommodations as this application was commenced in May 2022 and no rent has been paid since February 2022. The Landlord's Legal Representative requested immediate termination of tenancy and eviction.
45. I find a delay in the eviction only until August 31, 2023 is fair in these circumstances given that the Landlord is holding a last month's rent deposit. A longer delay would be unfair and prejudicial to the Landlord given the significant amount of rent arrears owing and that there have been no rent payments to the Landlord since February 2022.

It is ordered that:

1. The Landlord's L2 application is withdrawn.
2. The tenancy between the Landlord and the Tenants is terminated unless the Tenants voids this order.

3. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$53,065.00 if the payment is made on or before August 31, 2023. This amount exceeds the monetary jurisdiction of the Board. This amount is optional and only required if the Tenants elect to remain in the rental unit. Therefore, the Board is not ordering this amount to be paid as it exceeds the monetary jurisdiction. See Schedule 1 for the calculation of the amount owing.
4. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants has paid the full amount owing as ordered plus any additional rent that became due after August 31, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
5. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before August 31, 2023**
6. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$35,186.00. 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 Tenants are deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
7. The Tenants shall also pay the Landlord compensation of \$96.99 per day for the use of the unit starting July 25, 2023 until the date the Tenants moves out of the unit.
8. If the Tenants do not pay the Landlord the full amount owing on or before August 31, 2023, the Tenants will start to owe interest. This will be simple interest calculated from September 1, 2023 at 6.00% annually on the balance outstanding.
9. If the unit is not vacated on or before August 31, 2023, then starting September 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. 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 1, 2023.
11. On or before September 1, 2023, the Landlord shall repair the shower floor tiles to a good state of repair.

August 2, 2023
Date Issued

 Lisa Del Vecchio
 Member, Landlord and Tenants 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 1, 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 Tenants 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	\$54,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$1,121.00
Less the amount of the credit that the Tenants is entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$53,065.00

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

Rent Owing to Hearing Date	\$50,427.76
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$2,950.00
Less the amount of the interest on the last month's rent deposit	- \$87.73
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$1,121.00
Less the amount of the credit that the Tenants is entitled to	- \$0.00
Total amount owing to the Landlord	\$35,186.00
Plus daily compensation owing for each day of occupation starting July 25, 2023	\$96.99 (per day)