



Order under Section 69 Residential Tenancies Act, 2006

Citation: Patel v Bauer, 2023 ONLTB 50573

Date: 2023-07-18

File Number: LTB-L-041483-22

In the matter of: 399 PRINCESS ANNE CRESCENT OAKVILLE
ON L6K2Y4

Between: Jignesh Patel Landlord

And

Catherine Bauer Tenant

Jignesh Patel (the 'Landlord') applied for an order to terminate the tenancy and evict Catherine Bauer (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on February 9, 2023 and June 20, 2023. The Landlord 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 \$1,400.00. It is due on the 20th day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$46.03. This amount is calculated as follows: \$1,400.00 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 July 19, 2023 are \$22,050.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Section 82 Issues 8. The Tenant raised the following issues pursuant to section 82 of the *Residential Tenancies Act, 2006* (the 'Act'):

- Laundry Room
- Internet
- Illegal Entry
- Punched Entry Door / Threats

- No key to mailbox / Withholding Mail
- No rent receipts
- Yelled at Daughter
- Loud Music and TV
- No Safety Windows / Ceilings too Low

9. The Tenant resides in the basement unit with her daughter.

10. The Landlord did not breach any responsibilities regarding the laundry room. The Tenant testified that at the beginning of the tenancy, the Tenant had access to the laundry room. There was no formal lease agreement. On July 1, 2022, the Landlord locked her out of the laundry room. The Landlord testified that the laundry room was never part of the lease agreement. He allowed her to laundry at the beginning on occasion as a courtesy. The Tenant did not persuade me that laundry services was part of the lease agreement. As such, I am not satisfied that the Landlord decreased this service and did not breach his responsibilities.

11. The Landlord discontinued the Tenant's use of internet. The Tenant testified that at the beginning of the tenancy, internet was included in the cost of rent. On July 1, 2022, the Landlord discontinued the internet. The Landlord testified that he had to lower costs because the Tenant was not paying rent. On July 1, 2022, he changed providers. On November 4, 2022, he gave her back internet out of good faith for the Tenant's daughter. on April 19, 2023, the Landlord disconnected the internet again. I find that the reduction of this utility was unreasonable as the Landlord disabling the internet appeared to be because of the Tenant's arrears. As such, the Tenant is entitled to a remedy.

12. The Tenant testified that she paid \$35.00 more through her phone plan for internet. The Tenant is entitled to this cost from July – October 2023 and April 19, 2022 to the date of the hearing. This amount is \$210.00.

13. The Landlord did not enter the unit illegally. The Tenant testified that on December 16, 2022, the Landlord entered the Tenant's unit illegally. There was no notice to enter the unit and the Tenant's daughter was home alone and was frightened. The Landlord testified that he smelled smoke coming from the Tenant's unit. He knocked on the rental unit, but no one opened the door. As his parents died in a house fire, the Landlord was panicked by the smoke and entered the Tenant's unit. Pursuant to subsection 26(1)(a) of the Act, a landlord

may enter a rental unit without written notice in the case of an emergency. I am satisfied that the Landlord genuinely believed this to be an emergency. As such, while I believe the Tenant's daughter was frightened by the entry, I do not find that the Landlord entered the unit illegally.

14. The Landlord harassed the Tenant by making physical and verbal threats against her. The Tenant testified that the Landlord punched her unit door and threatened to punch her in the face. The Landlord testified he smelled cigarette smoke coming from the unit and punched the door because he did not like her doing that and he was frustrated. Based on the uncontested evidence, I find that the Landlord physically and verbally threatened the Tenant. Therefore, the Tenant is entitled to a remedy.
15. Based on the severity of the verbal threat, which was accompanied by a physical act, I am persuaded that the Landlord was intending to carry out the threat. As such, I find the impact on the Tenant to be substantial. Based on the impact and my knowledge of like cases before the Board, I find the Tenant is entitled to \$500.00 for this incident.
16. The Landlord substantially interfered with the Tenant by not providing her access to the mailbox. However, the Landlord did not withhold her mail. The Tenant testified that when the tenancy started, she did not have access to the mail. She asked for a mailbox key two weeks after the tenancy started and to date, she still does not have a key. The Tenant noticed she has not received some mail, for example, from hospital appointments and from the Ministry.
17. The Landlord testified that he gave the Tenant a mailbox key and was surprised it did not work. He was first aware that she did not have access to the key on February 9, 2023 when the Tenant raised it in the first part of the hearing. When asked why he did not provide the Tenant with a copy of the mailbox key between February 9, 2023 and the present hearing, he states that he gives her mail to her. He denied ever withholding the Tenant's mail. A tenant is entitled to her own autonomy in her rental unit and should be able to access her mail, irrespective of whether the Landlord can provide it to her. As such, by not providing the Tenant with a mailbox key, I find that the Landlord substantially interfered with her. However, there is insufficient evidence to support that the Landlord withheld her mail. The Landlord shall give the Tenant a working copy of the mailbox key.
18. The Landlord denied the Tenant a copy of her rent receipts. The Tenant testified that she had asked the Landlord several times for rent receipts, but she was never given one. The Landlord testified that the Tenant never asked for rent receipts. I find that the Landlord has been given adequate notice that the Tenant asked for rent receipts. As such, the Landlord shall give the Tenant a copy of her rent receipts when requested.
19. The Landlord did not substantially interfere with the Tenant's daughter's reasonable enjoyment. The Tenant testified that last summer, her daughter set off the fire alarm. As a result, the Landlord yelled at her. The Landlord testified he attended the unit as he heard the

fire alarm. The Tenant's daughter replied that she burnt toast. He testified that he never yelled. There is insufficient evidence from the Tenant to establish that the Landlord yelled at her daughter, such as the daughter's testimony or an affidavit. As such, I do not find that the Landlord interfered with the Tenant's daughter's reasonable enjoyment.

20. The Landlord did not substantially interfere with the Tenant by allegedly blaring the music and TV. The Tenant testified that the Landlord would play his music and TV loudly a couple times a week. The Tenant testified having spoke to the Landlord about this issue at least twice. The Landlord denied blaring his music or TV and that the Tenant spoke to him about this issue. There was insufficient evidence to support the Tenant's claim, such as noise logs or complaints to the police. As such, I am not persuaded the Landlord substantially interfered with the Tenant in this regard.
21. The Landlord is not in breach of his responsibilities regarding the windows and ceiling. The Tenant testified that the windows are too small and therefore, she does not have an adequate exit. She called the city and has not yet received a response. She also stated that the ceilings are too low in her unit. The Tenant did not provide any evidence that the size of the windows and the height of the ceilings are contrary to any by-laws. As such, I do not find the Landlord is in breach of his responsibilities in this regard.

RELIEF

22. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would not be unfair to postpone the eviction until August 19, 2023 pursuant to subsection 83(1)(b) of the Act.
23. The Tenant testified that she has not paid rent because she has not received all of the services she is entitled to. She has found a place commencing September 1, 2023. Her daughter is also taking part of a rehabilitative program commencing August 15, 2023.
24. The Landlord objected to the tenancy continuing as the stress of the arrears is greatly impacting his health. His income is also minimal as he is only in receipt of sick benefits.
25. In consideration of the foregoing, I find it would not be unfair to postpone termination of the tenancy. The Tenant submits that she is not willing to continue the tenancy. However, in consideration of the Tenant's daughter, I find it would not be unfair to provide them with some time to organize their move or obtain the funds needed to void 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:**

- \$22,236.00 if the payment is made on or before July 19, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$23,636.00 if the payment is made on or before August 19, 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 19, 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 19, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$20,382.03. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$46.03 per day for the use of the unit starting June 21, 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 July 29, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 30, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before August 19, 2023, then starting August 20, 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 20, 2023.
10. The Landlord shall provide the Tenant with a copy of the mailbox key.
11. The Landlord shall provide the Tenant with a copy of rent receipts when requested.

July 18, 2023

Date Issued

Camille Tancioco

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 20, 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 July 19, 2023

Rent Owing To July 19, 2023	\$22,236.00
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
Less the amount the Landlord owes the Tenant for an abatement	- \$710.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$21,526.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before August 19, 2023

Rent Owing To August 19, 2023	\$23,636.00
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
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$710.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$23,636.00

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

Rent Owing To Hearing Date	\$20,696.03
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	- \$
Less the amount of the interest on the last month's rent deposit	- \$0.00
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$710.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$19,986.03
Plus daily compensation owing for each day of occupation starting June 21, 2023	\$46.03 (per day)