



Order under Section 69 Residential Tenancies Act, 2006

Citation: Williams & McDaniel Property Management v Korey Crossman, 2023 ONLTB 44068

Date: 2023-06-15

File Number: LTB-L-080987-22

In the matter of: 203, 36 BOEHMER BLVD
SAULT STE. MARIE ON P6B5B8

Between: Williams & McDaniel Property Management Landlord

And

Korey Crossman Tenant

Williams & McDaniel Property Management (the 'Landlord') applied for an order to terminate the tenancy and evict Korey Crossman (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's Agent Aaron Willing and the Landlord's Legal Representative John Andersen and the Tenant Korey Crossman 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 was \$839.96 and it increased to \$860.95 on April 1, 2023. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$28.31. This amount is calculated as follows: \$860.95 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 June 30, 2023 are \$5,950.37. The Tenant did not dispute the Landlord's accounting but did not believe he should have to pay the amount due to issues with the rental unit.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$830.00 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 \$23.66 is owing to the Tenant for the period from October 9, 2021 to June 6, 2023.

Section 82 Issues

10. The Tenant raised issues under section 82 relating to the bathroom in the rental unit as well as the balcony door. The Tenant chose not to pursue other issues originally listed on the form he filed with the Board and served the Landlord.
11. Subsection 20(1) of the Act provides that the landlord is responsible for providing all needed repairs and maintenance:

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.

12. In *Onyskiw v. CJM Property Management*, [2016 ONCA 477](#), the Court of Appeal determined that a contextual approach should be adopted when considering a landlord's potential breach of [subsection 20\(1\)](#) of the [Act](#) and a breach will not be found if the landlord's response to a maintenance issue was reasonable in the circumstances.
13. The Tenant submitted photographs of the bathroom. The photographs depict tiles that are loose from the wall and some have come completely off the wall itself. The photographs also show what appears to be mold growing on the wall above the tiling. The Tenant also testified the bathtub is bubbling due to a failing insert that had been installed overtop of the existing bathtub. Additionally, the fan in the bathroom no longer works. The Tenant's evidence was that while the fixtures in the bathroom work, the experience of using the bathroom in its condition "sucks".
14. The Tenant also submitted photographs of the balcony door. The photographs show the balcony door loose on its hinges and being supported by books. While the Tenant did not express any particular impact the balcony door has had on him, I can infer its state of disrepair limits its intended use. Additionally, I can infer having to look at the door as well as supporting it with books would result in inconvenience and embarrassment of one's living conditions.

15. The Tenant testified that he had advised the prior landlord of the issues approximately two years ago. He did not submit any evidence showing when this notification occurred. The Tenant did submit email communications between his girlfriend and the Landlord from October 2022. On October 3, 2022, the Landlord acknowledges the concerns and states they were unaware of them. The Landlord also advises the Tenant they will look into the issues with the property manager and get back to the Tenant “next week”.
16. On October 19, 2023, the Tenant’s girlfriend follows up with the Landlord by email advising the problems have yet to be addressed. The Landlord replies the same day advising the Tenant has not been forgotten. The Landlord states they spoke with the building manager and was advised attempts to address the Tenant’s concerns had been made prior to the Tenant’s girlfriend moving in. The Landlord also states they should be discussing the issues with the Tenant. Again, the email closes by saying the Landlord will contact the Tenant when they have a solution and a plan to resolve the issues.
17. The Tenant testified the Superintendent attended the rental unit on December 18, 2022 but did not have the materials to conduct the repairs. The Tenant’s evidence was they agreed to December 28, 2022 to have the repairs done.
18. The Landlord did not dispute the repairs needed to be done. Their evidence was the work was approved in late October or early November of 2022. The Landlord submitted a receipt for materials from Home Depot in the amount of \$489.27 to support their position they were prepared to effect the repairs needed. The receipt is dated for November 22, 2022.
19. The Landlord’s evidence was the parties could not agree on a date and that the Tenant cancelled dates that had been arranged. The Landlord submitted a 5 page hand written declaration from Carter Blevins, the building manager. Mr. Blevins did not attend the hearing to testify or be cross examined. No reasonable explanation was given for his absence and no evidence was presented that the Landlord, out of necessity, had to rely on this hand-written declaration. As a result, I preferred the in person viva voce evidence given by the Tenant. The Tenant’s evidence was he has not prevented the Landlord from conducting the repairs needed. Additionally, the Landlord submitted no records showing dates they intended to do the work or interference with them on the part of the Tenant.
20. The parties agreed that as of the hearing date, the repairs have not been done. The Landlord acknowledges the problems. They have known about them since at least October 3, 2022 and yet eight months later the issues have yet to be repaired. The Landlord’s initial response was to update the Tenant the following week. 16 days later a similar response was given to the Tenant’s follow up. The receipt provided from Home Depot is dated almost 50 days after they were informed of the issues. This is not in view, a reasonable or timely response.
21. It is logical to infer that had the Tenant engaged in ongoing efforts to prevent the repairs to the unit there would be some evidence of such. Emails or videos of the alleged conduct on the part of the Tenant is reasonable to expect when the Landlord’s position is the Tenant

has, for eight months, prevented the repairs from being done. Further, the Landlord does not need the Tenant's consent to enter the unit and do the work. The Landlord can give the Tenant 24 hours written notice of entry and then enter the unit to fix the issues. No evidence was presented showing this was done.

22. On all the evidence, I am satisfied the Landlord did not and has not responded reasonably to the bathroom or balcony door maintenance complaints from the Tenant. As a result, I am satisfied on a balance of probabilities the Landlord has not met their maintenance obligations under section 20(1) of the Act.
23. The Tenant sought a 50% rent abatement for the months of December 2022 and January 2023. I confirmed with the Tenant that this was the time period he was seeking a rent abatement for and stated it was. The Tenant also sought an order requiring the Landlord to do the repairs so I was satisfied the Tenant was aware of remedies being available to him to the day of the hearing.
24. An abatement of rent is a contractual remedy based on the principle that rent is charged in exchange for a bundle of goods and services and if a tenant is not receiving those goods and services then the rent should be abated in a sum proportional to the difference between what is being charged and what is being received.
25. While I find the unrepaired bathroom and balcony door are worthy of an abatement of rent, I find 50% of the monthly rent to be unreasonable. While I can appreciate the circumstances in the bathroom are not ideal, the bathroom is useable. The balcony door is an inconvenience and like the bathroom, unsightly. However, the remainder of the rental unit is also useable. Based on my knowledge of similar circumstances before the Board, I find a total rent abatement in the amount of 20% to be fair and reasonable for the months of December 2022 and January 2023. I apportion 15% of the abatement to the bathroom and 5% for the balcony door.
26. The monthly rent for December 2022 and January 2023 was \$839.96. 20% of this amount rounds to \$168. Two months of this abatement amounts to \$336.00 and it will be deducted from the rent arrears owing by the Tenant to the Landlord.
27. Given the time period the issues have remained unaddressed, as requested by the Tenant, an order will issue for the Landlord to do the required repairs.

Section 83 Considerations

28. The Landlord requested termination within 11 days of this order. The Landlord submitted efforts were made to negotiate a payment agreement with the Tenant but no agreement could be reached.
29. The Tenant candidly admitted he stopped paying the monthly rent in December of 2022 as leverage against the Landlord as he was not satisfied with the Landlord's response to his maintenance issues. As of the date of the hearing, the Tenant's last payment to the Landlord was on November 2, 2022.

30. The Tenant testified he lives alone and has no health issues. He has lived in the rental unit since 2017. The Tenant was not sure how long it would take him to pay the rent arrears to the Landlord. He suggested a monthly amount that would take approximately 18 months to repay. The Tenant was asked if he had the money he withheld from the Landlord for the past seven months and he stated he did not. In the circumstances, I was not satisfied the Tenant could afford an ordered payment plan or that he would abide by one given his approach to withholding rent if he feels justified in doing so.
31. 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.

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:**
 - \$5,800.37 if the payment is made on or before June 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 June 26, 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 voids this order, the Landlord shall conduct the repairs to the bathroom of the rental unit and the balcony door by July 20, 2023.
5. **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 June 26, 2023**
6. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$4,255.62. 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.
7. The Tenant shall also pay the Landlord compensation of \$28.31 per day for the use of the unit starting June 7, 2023 until the date the Tenant moves out of the unit.
8. If the Tenant does not pay the Landlord the full amount owing on or before June 26, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 27, 2023 at 6.00% annually on the balance outstanding.

9. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
10. If the unit is not vacated on or before June 26, 2023, then starting June 27, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
11. 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 June 27, 2023.

June 15, 2023

Date Issued

John Cashmore
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 December 27, 2023 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 June 26, 2023

Rent Owing To June 30, 2023	\$5,950.37
Application Filing Fee	\$186.00
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$336.00
Total the Tenant must pay to continue the tenancy	\$5,800.37

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

Rent Owing To Hearing Date	\$5,259.28
Application Filing Fee	\$186.00
Less the amount of the last month's rent deposit	- \$830.00
Less the amount of the interest on the last month's rent deposit	- \$23.66
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$336.00
Total amount owing to the Landlord	\$4,255.62

Plus daily compensation owing for each day of occupation starting June 7, 2023	\$28.31 (per day)
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