



Order under Section 69 Residential Tenancies Act, 2006

Citation: Old Oak Properties Inc. v Alexandra Brodhagen, 2023 ONLTB 39808

Date: 2023-05-24

File Number: LTB-L-061756-22

In the matter of: 205, 1150 ADELAIDE ST N
LONDON ON N5Y2N5

Between: Old Oak Properties Inc . Landlord

And

Alexandra Brodhagen Tenant

Old Oak Properties Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Alexandra Brodhagen (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on May 17, 2023.

The Landlord's Agent Robyn Brown and the Landlord's Legal Representative Gail Kukor Lang and the Tenant Alexandra Brodhagen attended the hearing.

Determinations:

1. At the hearing the Landlord relied on oral submissions and referred to documents to support their application. The Tenant was also given an opportunity to provide submissions and evidence.
2. The Landlord's property manager Brittany Beuckelare testified she served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice) by sliding the notice entirely under the Tenant's door on September 12, 2022. The Landlord submitted a Certificate of Service with their application filled out by Ms. Beuckelare indicating this same information.

3. The Tenant stated she did not receive the N4 notice and has never seen Ms. Beuckelare serving notices in the residential complex. Without more evidence from the Tenant, I find it more likely than not that Ms. Beuckelare served the N4 notice on September 12, 2022 as she testified.
4. At the hearing, the Tenant stated she had paid the monthly rent in September of 2022. This would have voided the N4 notice. I asked the Tenant if she had sent in any receipts or documents showing she had paid the amount on the notice and when it was paid. The Tenant stated she did not have time to go to her bank to obtain records of any payment. She also stated the payment was made electronically. I provided the Tenant time to access her banking records online to obtain evidence of this payment. The Tenant testified she had accessed her banking records for September 2022 and did not see the payment and that she was mistaken. Therefore, 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.
5. As of the hearing date, the Tenant was still in possession of the rental unit.
6. The lawful rent was \$1,062.60. On September 21, 2022 the Landlord mailed the Tenant an N1 notice increasing the monthly rent effective January 1, 2023. The Landlord submitted a Certificate of Service in support of this mailing taking place. The notice was deemed served on September 26, 2022, providing the Tenant the required 90 days notice.
7. The Tenant testified she did not receive this N1 notice. Without more evidence from the Tenant, I find it more likely than not the N1 notice was properly served and the monthly rent increased to \$1,089.16 on January 1, 2023. It is due on the 1st day of each month.
8. Based on the Monthly rent, the daily rent/compensation is \$35.81. This amount is calculated as follows: $\$1,089.16 \times 12$, divided by 365 days.
9. The Tenant has paid \$6,388.26 to the Landlord since the application was filed.
10. The rent arrears owing to May 31, 2023 are \$2,245.34.
11. The Landlord collected a rent deposit of \$1,054.62 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.
12. Interest on the rent deposit, in the amount of \$9.90 is owing to the Tenant for the period from January 1, 2023 to May 17, 2023.
13. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Section 82 Issues

14. On October 17, 2022, the Tenant advised the Landlord that the rental unit had cock roaches. The Tenant used the Landlord's online portal to report the complaint and the Landlord acknowledged receiving it.

15. 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.
16. The Tenant submitted photographs of the rental unit in which cock roaches are clearly visible.
17. The Landlord's evidence was the initial complaint from the Tenant was not addressed because it contained multiple concerns. A miscommunication amongst the Landlord's staff led to them closing the work order request without addressing all of the concerns contained in it.
18. The Tenant followed up with the Landlord on October 26, 2022 and November 10, 2022.
19. The Landlord's evidence was they have pest control at the property every Friday. They try to give Tenant's 4-7 days notice before pest control treatment so that the Tenant can prepare their unit accordingly.
20. The Landlord, after noticing the work order had been closed prematurely, submitted a new work order. The Tenant gave the Landlord her preferred times of day for treatment and the Landlord advised the Tenant they would do their best to accommodate her requests. No evidence was presented showing the Landlord was prevented from serving a notice of entry and treating the rental unit.
21. The rental unit was then treated on November 18, 2022 and the parties agreed the problem was resolved by November 28, 2022.
22. While a Landlord cannot be expected to resolve an issue immediately, I do not find it reasonable that it took over one month's time to have the rental unit treated by pest control. The Landlord's own evidence was they aim for between 4-7 days to treat a unit in these circumstances.
23. Abatement is a contractual remedy intended to address the idea that if a tenant is paying rent for a bundle of goods and services and not receiving everything being paid for then the tenant is entitled to abatement of the rent proportional to the difference between what is being paid for and what is being received. Here, the Tenant was paying for a pest free rental unit and clearly not receiving it.
24. One of the primary principles reflected in the case law with respect to remedy in cases like this is the idea that if a landlord responds to a disrepair complaint in a timely and effective manner no remedy should flow. Here, that principle does not assist the Landlord as I have found the response was not timely. For these reasons, I find the Tenant is entitled to a rent abatement for the cockroach issue.
25. The Tenant notified the Landlord on October 17, 2022 of the cockroach issue. I find the Landlord should have responded by October 22, 2022, which is five days after they received the complaint from the Tenant. For these reasons I will consider October 22, 2022

until November 28, 2022 for the purposes of determining a rent abatement. This amounts to 38 days.

26. The monthly rent during the period of October 22, 2022 until November 28, 2022 was \$1,062.60. Based on the monthly rent at this time the daily rent was \$34.93. This is calculated by multiplying the monthly rent by 12 months and then dividing that total by 365 days.
27. The Tenant sought a 50% rent abatement for the cockroach issue. I find this amount excessive given the lack of any evidence showing she is more sensitive to the presence of cockroaches than the average tenant. I accept the Tenant's evidence that the experience was traumatic and frustrating. She had to follow up with the Landlord because her initial complaint was overlooked by the Landlord. Based on my knowledge of similar cases before the Board, I believe a reasonable abatement of the rent paid for the time period is 30%.
28. The rent charged over the period October 22, 2022 until November 28, 2022, based on the daily rate calculated above, is \$1,327.34. A rent abatement of 30% amounts to \$398.20 and it will be ordered.
29. The Tenant also testified she notified the Landlord of an issue with bedbugs on October 17, 2022. During cross examination, after reviewing documents she submitted in evidence, the Tenant testified she did not mention bedbugs to the Landlord until November 10, 2022. The Landlord's submission was this document was actually from November 18, 2022.
30. The parties agreed the issue was resolved by November 28, 2022.
31. Even if the Tenant did notify the Landlord of the bedbug issue on November 10, 2022, I find the complete resolution of the problem within 18 days to be a timely and effective response by the Landlord. Again, the Landlord cannot be expected to resolve an issue immediately and I find there is an inherent time requirement needed to address bedbugs. As a result, no remedy will be ordered in relation to bed bugs.
32. The Tenant is entitled to an abatement of rent of \$398.20 for the cockroach issue. This amount will be deducted from the amount owing to the Landlord.
33. I find the total amount of rent arrears owing to May 31, 2023 and the cost of filing the application is \$2,033.14. The rent abatement of \$398.20 has been deducted from this amount.

Section 83 Considerations

34. The Landlord sought an eviction of the Tenant but submitted they would not find a conditional order unfair since a determination of the rent arrears had not been made. The Landlord submitted they had attempted to negotiate a payment agreement with the Tenant by sending a letter to her in February 2023.

35. The Tenant submitted she would like the opportunity to maintain the tenancy through an ordered payment plan. The Tenant stated it would take her approximately 10 months to pay the Landlord the rent arrears owing. This estimate was based on the total arrears claimed by the Landlord prior to any determination of any rent abatement.
36. I canvassed the Tenant's monthly income and she stated it varies each month. She acknowledged her finances are "tight". I took into account the significant payments made by the Tenant since the application was filed. While it would be difficult for the Tenant to afford the monthly rent as well as meaningful payment towards the rent arrears, I find the tenancy can be sustained if the Tenant budgets accordingly.
37. 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 grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act. As termination is a remedy of last resort, I find it is fair and reasonable to afford the Tenant an opportunity to maintain her tenancy.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
2. The Tenant shall pay to the Landlord \$2,033.14 for arrears of rent up to May 31, 2023 and costs in accordance with the following schedule:
 - a) \$203.00 on June 15, 2023
 - b) \$203.00 on July 15, 2023
 - c) \$203.00 on August 15, 2023
 - d) \$203.00 on September 15, 2023
 - e) \$203.00 on October 15, 2023
 - f) \$203.00 on November 15, 2023
 - g) \$203.00 on December 15, 2023
 - h) \$203.00 on January 15, 2024
 - i) \$203.00 on February 15, 2024

j) \$206.14 on March 15, 2024

3. The Tenant shall pay the Landlord the monthly rent of \$1,089.16 as it becomes due and owing on or before the first day of every month beginning June 1, 2023 until March 1, 2024, or until the arrears are paid in full, whichever date is earliest.
4. If the Tenant fails to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenant to the Landlord pursuant to paragraphs 2 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenant, apply to the LTB within 30 days of the Tenant's breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant and requiring that the Tenant pay any new arrears, NSF fees and related charges that became owing after May 31, 2023.

2023 ONL TB 39808 (CanLII)

May 24, 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.