



Order under Section 69 and 88.2 Residential Tenancies Act, 2006

Citation: Gao v Marsman, 2023 ONLTB 33300

Date: 2023-05-01

File Number: LTB-L-040792-22

In the matter of: 64 DELWOOD DR
SCARBOROUGH ON M1L2S7

Between: Xiaohuan Gao and Zhanbo Gao Landlord

And

Lorne Marsman Tenant

Xiaohuan Gao and Zhanbo Gao (the 'Landlord') applied for an order to terminate the tenancy and evict Lorne Marsman (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (L1 application).

The Landlord also applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement (L2 application) This application was heard by videoconference on April 5, 2023.

The Landlord and the Tenant attended the hearing.

Determinations:

Adjournment Request

1. The Tenant requested an adjournment to file Tenant issues pursuant to section 82 of the *Residential Tenancies Act, 2006*. The Tenant testified that he learned on March 29, 2023 that the Landlord has reported his rent arrears to a credit reporting agency and he wants to file a harassment claim in regards to that. The Tenant's harassment claim also includes the actions of a collections agency who have been calling and emailing him. The Tenant also sought to bring maintenance claims about a washer/dryer, and a leaking faucet.
2. The Tenant had not filed a form listing his tenant issues pursuant to section 82(2) of the Act.

3. The Landlord was opposed to the adjournment request as the alleged rent arrears and unpaid utility bills are extremely high. The Landlord Xiaohuan Gao ('X.G') testified that she is under significant financial strain and is experiencing anxiety and depression as a result.
4. During the submissions on the request for the adjournment, it came to light that the Landlord had not sent their supporting documentation to the Tenant. This documentation includes bills, an overview of the outstanding utilities, messages between the parties, and the L1/L9 update sheet.
5. Section 183 of the RTA directs the Board to adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and to be heard on the matter.
6. The adjournment was denied because it was not necessary. The documents that both parties had not disclosed were straightforward and could be reviewed on the date of the hearing. Holding the matter down and providing time for disclosure was sufficient to address procedural fairness concerns.
7. Additionally, I allowed the Tenant to proceed with any tenant issues they choose, despite not complying with the disclosure requirements in the Act and Rules. I did this because I was satisfied that pursuant to section 82(b) of the Act the Tenant could not comply with the 7-day disclosure requirement. This is because the Tenant only learned about the credit report issue on March 29, 2023 and the hearing was on April 5, 2023. This means that the Tenant had exactly 7 days between learning of the issue and the hearing.
8. The Tenant's other issues, including the phone calls and emails from the collections company, and maintenance issues, arose more than 7 days prior to the hearing and therefore the Tenant had sufficient time to prepare to bring those issues, but still did not file any evidence or a list of issues. However, as I was prepared to hear the credit report issue, I indicated to the Tenant that I would hear all of their tenant issues.
9. I held the matter down for 40 minutes and instructed the Landlord to send the Tenant: the L1/L9 update sheet, their outstanding bill update sheet, and any bills they sought to rely on. The Tenant was instructed to send the Landlord a list of his tenant issues and any supporting documentation.
10. The complexity of the documents that the Landlord sent the Tenant on the day of the hearing was low. The L1/L9 update sheet and the outstanding bill payment sheet are both overview documents of payments made by the Tenant. Additionally, the Tenant testified that he had received some of the outstanding utility bills from the Landlord but was not sure which ones. As such, the Tenant had already seen many of the bills relied upon by the Landlord.

11. The Landlord also sought to rely on text messages and emails between the parties but had not sent them to the Tenant prior to the hearing. Those communications were voluminous and could not be easily reviewed. As such I did not allow the Landlord to rely on those records.

The L1 Application

12. 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.

13. As of the hearing date, the Tenant was still in possession of the rental unit.

14. The lawful rent is \$2,230.21. It is due on the 1st day of each month.

15. Based on the Monthly rent, the daily rent/compensation is \$73.32. This amount is calculated as follows: $\$2,230.21 \times 12$, divided by 365 days.

16. The Tenant has paid \$1,700.00 to the Landlord since the application for arrears of rent. The Landlord testified that the Tenant has also paid \$1,800.00 for unpaid utility bills since the application was filed. The Landlord determined how to allocate the payments she received from the Tenant based on text messages from the Tenant that indicated his next payments would be for utilities.

17. The Tenant testified that the Landlord's update sheet for the rent arrears is missing a payment of \$2,150 he made sometime in October 2022. I asked the Tenant if he would like me to hold the matter down for him to get an electronic record of this payment, but he indicated that he would need to call his bank.

18. The party bringing an application always carries the ultimate burden of proving their application on a balance of probabilities. However, once a landlord provides evidence that rent was not paid, the onus shifts to the Tenant to positively establish that the rent was in fact paid.

19. As the Tenant was unable to provide any specifics about the additional payment he made in October 2022, or provide any supporting documentation, I am not satisfied on a balance of probabilities that payment was made.

20. The rent arrears owing to April 30, 2023 are \$20,275.76.

21. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
22. The Landlord collected a rent deposit of \$2,000.00 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.
23. Interest on the rent deposit, in the amount of \$208.22 is owing to the Tenant for the period from July 1, 2016 to April 5, 2023.

The L2 Application

24. The Landlord applied for their reasonable out-of-pocket expenses that are the result of the Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement pursuant to section 88.2 of the Act.
25. The Landlord seeks \$2,097.64 in unpaid utilities for water, gas, a heating from June 2022 to April 2023. The Tenant was obligated to pay for these utilities pursuant to their lease agreement.
26. The Tenant does not dispute the outstanding utility amounts. As such the Tenant shall pay the Landlord \$2,097.64 in unpaid utilities.

Tenant Issues

27. The Tenant raised the following issues pursuant to section 82 of the Act:
 1. There is no power in the rental property's laundry room and as such the Tenant has been unable to use the washing machine and dryer from November 2022 to the hearing date;
 2. The faucet in the rental unit's shower has been leaking from April 2022 to the hearing date;
 3. The Landlord's collection efforts for the outstanding rent arrears are harassment.
28. On April 7, 2023, after the hearing, the Tenant emailed the Board with further evidence regarding his tenant issues. I did not invite post hearing submissions, nor would it be appropriate for me to accept evidence that the Landlord did not have an opportunity to challenge at the hearing. As such, the only evidence I have considered is the evidence led at the hearing.

Washer and Dryer

29. The Tenant testified that as of November 2022 there has been no power in the rental unit's laundry room and therefore he cannot use the washer or dryer. The Tenant testified that this problem is ongoing.
30. The Tenant testified that they first told the Landlord about the issue in November 2022 but did not provide a date. The Landlord testified that she first received notice of the issue on December 5, 2022.
31. The Landlord stated that she had no money to hire someone to fix the issue, so she had to wait until her husband returned from overseas.
32. The Landlord testified that they attended the rental unit on January 19, 2023 but her keys no longer worked for the rental unit and she was unable to get into contact with the Tenant to gain access to the rental unit.
33. The Landlord testified that on January 26, 2023 she attended the rental unit and determined the issue was that the circuit breaker needed to be flipped.
34. The Tenant testified that the problem is ongoing but agrees he has not notified Landlord of that.
35. Section 20(1) of the Act states that 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.
36. I find on a balance of probabilities that the Landlord failed to meet the Landlord's obligations under subsection 20(1) of the Act to repair the laundry room facilities in the rental unit between December 5, 2022 and January 26, 2023.
37. I find on a balance of probabilities that the Tenant notified the Landlord about the issue on December 5, 2022. This is because I did not find the Tenant's evidence to be reliable as he was unable to provide the exact date that the notification happened. In contrast, the Landlord was able to provide the date that the notification occurred. The Landlord is only responsible for not fixing the issue up to January 26, 2023 as the Landlord believed the issue to be resolved on that date and the Tenant did not tell them otherwise.
38. I do not find that the Landlord responded to the issue in a timely or reasonable manner as instead of dealing with the issue immediately they waited for their husband to be back in the country.

39. The Tenant seeks a rent abatement in the amount of \$250.00 for every month that the issue existed as he had to go to the dry cleaner and laundromat and put gas in his vehicle to get to those locations.
40. I do not find \$250.00 a month for an unusable laundry room to be reasonable. That amount is way above what it would cost to do monthly laundry at a laundromat and the Tenant provided no supporting documentation to show otherwise. The Tenant testified that some of the cost comes from having to do dry cleaning, but dry cleaning is a different service than what would be provided by the rental unit's laundry room.
41. I find that a rent abatement in the amount of 5% for December 2022 and January 2023, to be more reasonable. 5% of the monthly rent is \$111.51. The total rent abatement awarded to the Tenant for this issue is \$223.02.

Leaking Faucet

42. The Tenant testified that since April 2022 their shower faucet has been leaking and that the problem is ongoing. The Tenant testified that he notified the Landlord by text in April 2022 but did not provide the specific date or a copy of that text.
43. The Tenant testified that he has resorted to putting a bucket under the faucet to reduce the noise, but that creates another problem because the bucket fills up and then needs to be emptied.
44. The Tenant also testified that the noise is bothersome.
45. The Landlord testified that they never received notice from the Tenant about this issue.
46. In *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477, the Court of Appeal held that the LTB should take a contextual approach and consider the entirety of the factual situation in determining whether there was a breach of the landlord's maintenance obligations, including whether the landlord responded to the maintenance issue reasonably in the circumstances. The court rejected the submission that a landlord is automatically in breach of its maintenance obligation as soon as an interruption in service occurs.
47. The Tenant testified that he notified the Landlord, but the Landlord testified that the Tenant did not. I had no credibility concerns about either witness and suspect that one is either wrong or misremembering the issue. However, the Tenant has the burden of proving the maintenance issue. I find that the Tenant led insufficient evidence to do so as they had no supporting documentation or specifics about when the notification happened.
48. That a maintenance issue exists is not sufficient to prove a breach of the Act. The Tenant must prove that they notified the Landlord and how their response was inadequate or untimely. The Tenant did not do so and therefore the claim regarding the leaking faucet is dismissed.

The Landlord's Collection Efforts

49. The Tenant testified that as of October or November 2022 the Landlord hired a collections agency that has been harassing him. The Tenant testified that he receives phone calls about 3-4 times a week and that the calls are heavy handed.
50. The Tenant testified that he discovered as of March 29, 2023 that the collections agency reported his outstanding arrears to a credit reporting agency and it is now showing up on his credit report. The Tenant is not sure when his arrears were reported to the credit reporting agency but suspects the note may have been there for some time.
51. The Tenant testified that the note on his credit report will affect his ability to acquire any financing that needs good credit.
52. The Landlord testified that she signed a contract with a collection's agency December 19, 2022.
53. The Landlord testified that the collection agency she hired has sent 5 emails to the Tenant. The Landlord testified that the first one was sent on January 18, 2023. The Landlord is unsure how many phone calls have been placed to the Tenant by the collection's agency.
54. The Landlord testified that she did not ask the collection agency to report the arrears to the credit reporting agency and that when she found out that it had occurred, she asked the collections agency to take steps to have it removed.
55. Section 23 of the Act states that a landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant.
56. While harassment is generally a course of conduct the reasonable landlord knows or ought to know would be unwelcome to the reasonable tenant, a tenant will likely always find requests for payment unwelcome particularly from a collection agency. Therefore, I cannot find that, on its face, making demands for payments of rent, particularly where money is owed, constitutes harassment.
57. The Tenant led insufficient evidence to establish that the actions of the Landlord's collection agent constitute harassment. The Tenant was only able to provide general information about the amount of calls he typically receives in a week and that he finds the calls "heavy handed". The Tenant did not point to any specific phrase in a phone call or

email that he found harassing. I also have a reliability concern with the Tenant's testimony regarding the number of calls he received as they also had no specific or concrete evidence, a call log for example.

58. Regarding the collections agency reporting the unpaid rent to the credit reporting agency, I do think there is potential for mischief for a landlord to bypass the adjudicative and informal processes established by the Act and go straight to collection, without the Board first issuing an order. However, on the facts of this specific case I find that the Landlord did not explicitly ask the collections agency to report the unpaid rent, that the Landlord asked the collections agent to take steps to remove the notation when she learned about it, and that the Landlord's only motivation was to receive rent that is owed to her. The Landlord testified that the large amount of outstanding arrears has put her under extreme financial stress and severely affected her mental health. For those reasons I do not find the Landlord's actions in hiring the collections agency to be harassment, nor do I find the reporting of the Tenant's arrears to be harassment. This claim is dismissed.

Relief from Eviction

59. The Tenant requested relief from eviction in the form of a payment plan. The Tenant testified he had to stop working for medical reasons and is now only receiving income from Ontario Works. The Tenant testified that he expects to get cleared by his doctor to return to work in the upcoming weeks.
60. The Landlord is opposed to a payment plan because of the large amount of outstanding arrears and because they do not think the Tenant will abide by it. The Landlord testified that she has made multiple attempts to negotiate a repayment plan, but the Tenant has refused them all.
61. I do not think it would be fair in the circumstances to impose a repayment plan as I am not satisfied that the Tenant would abide by it. The Tenant owes \$20,275.76 in outstanding arrears to the end of April 2023. The Tenant is also not currently working and once they return to work the arrears are so high that repayment will likely take years. The evidence before me does not support that the Tenant will abide by a repayment plan.
62. The Tenant also requested relief from eviction in the form of a delayed eviction. The Tenant testified that he has been looking for a new place for the last 7 months and is on the waiting list for housing accommodations. The Tenant testified that his only source of income is Ontario Works and as such the Tenant testified that he cannot afford to rent anywhere new.
63. The Landlord is opposed to any delay of the eviction because of the extreme financial prejudice they have suffered from the Tenant's non-payment.

64. 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 May 20, 2023 pursuant to subsection 83(1)(b) of the Act. In making that determination I have considered the limited means of the Tenant, the Tenant issues raised, that the Tenant had to stop working for medical reasons, and that they need time to find another place to live. However, I have declined to postpone the eviction any later than May 20, 2023 because of the large amount of outstanding arrears and that repayment in the immediate future is unlikely.

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:**
 - \$22,468.95 if the payment is made on or before May 20, 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 May 20, 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 May 20, 2023.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$16,166.91. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit, interest the Landlord owes on the rent deposit, and the rent abatement 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 \$73.32 per day for the use of the unit starting April 6, 2023 until the date the Tenant moves out of the unit.
7. The Tenant shall also pay to the Landlord \$2,097.64 which represents the reasonable out-of-pocket expenses the Landlord has incurred as a result of the unpaid utility costs.

8. If the Tenant does not pay the Landlord the full amount owing on or before May 12, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 13, 2023 at 6.00% annually on the balance outstanding.
9. If the unit is not vacated on or before May 20, 2023, then starting May 21, 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 May 21, 2023.

May 1, 2023

Date Issued

Amanda Kovats

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 November 21, 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 May 20, 2023

Rent Owing To May 31, 2023	\$24,205.97
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,700.00
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}	- \$223.02
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$22,468.95

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

Rent Owing To Hearing Date	\$20,112.15
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,700.00
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	- \$2,000.00
Less the amount of the interest on the last month's rent deposit	- \$208.22
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$223.02
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$16,166.91
Plus daily compensation owing for each day of occupation starting April 6, 2023	\$73.32 (per day)