



Order under Section 69 Residential Tenancies Act, 2006

Citation: Starlight Canadian Residential Growth Fund v Boston, 2023 ONLTB 31649

Date: 2023-04-21

File Number: LTB-L-051110-22

In the matter of: 102, 7 STAG HILL DR
EAST YORK ON M4B1K7

Between: Starlight Canadian Residential Growth Fund Landlord

And

Jason Boston Tenant

Starlight Canadian Residential Growth Fund (the 'Landlord') applied for an order to terminate the tenancy and evict Jason Boston (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 28, 2023.

The Landlord's Legal Representative, Matt Anderson, and the Tenant attended the hearing. The Tenant spoke to Tenant Duty Counsel prior to the hearing.

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

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 \$1,209.81. It is due on the 1st day of each month.

4. Based on the Monthly rent, the daily rent/compensation is \$39.77. This amount is calculated as follows: \$1,209.81 x 12, divided by 365 days.
5. The Tenant has paid \$7,132.62 to the Landlord since the application was filed.
6. The rent arrears owing to March 31, 2023 are \$763.27.
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 \$1,210.70 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 \$7.21 is owing to the Tenant for the period from January 1, 2023 to March 28, 2023.

Section 82 issues

10. The Tenant raised issues pursuant to s.82 of the Act alleging the Landlord interfered with his reasonable enjoyment by:
 - a) Discontinuing the use of a storage locker on March 31, 2019; and
 - b) Sending reminders to the Tenant of an outstanding rent balance due since January 13, 2023; and
 - c) Providing the Tenant with invalid N1 Notices for the years of 2021, 2022, and 2023; and
 - d) False reporting of the Tenant's payment history to the LTB; and
 - e) Not paying the Tenant the correct interest on his last month's rent deposit; and
 - f) A member of the Landlord's staff telling another tenant that he was being evicted.
11. The Tenant also submitted evidence that the Landlord has breached their obligation under s.20 of the Act stating that since September 9, 2019, paint has been peeling from the walls and ceilings in the rental unit and despite advising the Landlord, the problem is still ongoing.

Discontinuance of a Service

12. The Tenant testified he has been withholding a portion of the rent on a monthly basis since September 2019. He stated the amount being withheld is the amount he believes is equivalent to use of a storage locker and this amount is increased each year in accordance with the Landlord's rent increases. He added this is the reason for the Landlord's L1 application as he had paid to the Landlord what he believes the rent should be for the period of September 2019 to March 2023.
13. As explained to the Tenant at the hearing, if a tenant has issues with a landlord, the remedy is not to withhold rent. Rather the remedy is to file a tenant application.

14. The Tenant stated that the discontinuance of the storage locker occurred on March 31, 2019 however, he did not file an application with the Board seeking a reduction in his monthly rent. Moreover, the application is out of time pursuant to subsection 29(2) of the Act. Therefore, the Tenants claim for a discontinued service is denied.

Invalid Rent Increases

15. The Tenant alleges the Landlord has provided him with invalid rent increases for the years of 2021, 2022, 2023 claiming the amount is not in accordance with the Act.
16. The Tenant testified in each of years that he received a notice of rent increase ('N1' Notice'), the new rent was incorrect as the Landlord was increasing the rent more than the prescribed amount. He stated the N1 Notice were invalid and therefore should not be paying the increased amount.
17. The Landlord's Legal Representative submitted the N1 Notices received by the Tenant included an above guideline increase which has not yet been ordered by the Board. He submitted these notices were provided to the Tenant as advance notice of a rent increase should the Landlord's request be granted. He added that at no time, did the Tenant's rent increase more than the prescribed amount.
18. The Landlord's Legal Representative submitted a copy of the Tenant's rent ledger for the period of September 2019 to March 2023 as evidence.
19. After review of the rent ledger, it was verified that the Tenant's rent has not increased more than the prescribed amount for the years of 2021, 2022, and 2023.
20. Based on the evidence before me, I am satisfied the Landlord has acted in accordance with the Act as it relates to rent increases. As such, the balance of the issues in the Tenant's claim at paragraph 10 b, c, d, e, and f, are denied.

Maintenance issue

21. The Tenant alleges the paint on the walls and the ceiling of his rental unit are peeling and have been in this condition since September 2019. He testified he has notified the Landlord of the issue on several occasions as well as during the Landlord's annual inspections. He added that despite his attempts to have the issue rectified, the Landlord has done nothing to remedy the peeling paint.
22. The Tenant submitted a series of undated photographs of the walls and ceiling in his unit as evidence. It was clear in these photographs the paint is peeling from several areas in the unit.
23. The Landlord's Legal Representative submitted the Landlord will address the maintenance issue in the Tenant's unit on an as soon as possible basis.
24. The Tenant was not seeking a rent abatement and sought an order for the Landlord to paint his rental unit. As such, the Tenant claim is granted.

Section 83 considerations

- 25. Based on the evidence before me, I find the Tenant has not paid to the Landlord the total monthly rent as it become due. I also find the Landlord is in breach of their maintenance obligations pursuant to s. 20 of the Act as they have not maintained the rental unit in a good state of repair.
- 26. 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 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.

It is ordered that:

- 1. The Tenant shall pay to the Landlord \$949.27, which represents the arrears of rent (\$763.27) owing as of the date of the hearing, and costs (\$186.00) for the filing of the application with the Board.
- 2. The Landlord’s application for eviction of the Tenant is denied on the condition that:
 - a) The Tenant shall make the following payments to the Landlord in respect of the monies owing under paragraph 1 of this order:

Date Payment Due	Amount of Payment
May 17, 2023	\$79.10 (costs and arrears)
June 17, 2023	\$79.10 (costs and arrears)
July 17, 2023	\$79.10 (costs and arrears)
August 17, 2023	\$79.10 (arrears)
September 17, 2023	\$79.10 (arrears)
October 17, 2023	\$79.10 (arrears)

2023 ONLTB 31649 (CanLII)

November 17, 2023	\$79.10 (arrears)
December 17, 2023	\$79.10 (arrears)
January 17, 2024	\$79.10 (arrears)
February 17, 2024	\$79.10 (arrears)
March 17, 2024	\$79.10 (arrears)
April 17, 2024	\$79.17 (arrears)

2023 ONLTB 31649 (CanLII)

b) **The Tenant shall also pay the Landlord the lawful monthly rent for the months of May 2023 to April 2024 in full, and on the first day of each corresponding month.**

3. If the Tenant fails to make any of the payments in accordance with paragraph 2, and by the dates required then:

a) The Landlord may apply under section 78 of the Act for an order terminating the tenancy and evicting the Tenant, and for the payment of any new arrears of rent and NSF charges not already ordered under paragraph 1 of this order. The Landlord must make the application within 30 days of a breach of a condition set out in paragraph 2 of this order.

b) The balance owing under paragraph 1 of this order shall become payable on the day following the date of default. The monies owing shall bear interest at the post-judgment interest rate determined under subsection 207(7) of the Act.

4. On or before May 1, 2023, the Landlord shall inspect the Tenant’s rental unit to assess the necessary repairs to the walls and ceiling in all rooms of the unit.

5. On or before June 1, 2023, the Landlord shall repair, as necessary, all areas of the rental unit where peeling paint are evident.

6. If the Landlord fails to comply with paragraphs 4 and 5 of this order, the Tenant may file their own application with the Board. This application must be filed within one year from the date of this order.

April 21, 2023

Date Issued

Susan Priest

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.