



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: 2686250 ONTARIO INC. v D'AGUILAR, 2023 ONLTB 31013

Date: 2023-04-17

File Number: LTB-L-080612-22
(TSL-21225-21)

In the matter of: E-05, 1475 KING STREET WEST
TORONTO ONTARIO M6K1J4

Between: 2686250 ONTARIO INC. Landlord

And

TARAH D'AGUILAR Tenant

2023 ONLTB 31013 (CanLII)

Your file has been moved to the Landlord and Tenant Board's new case management system, the Tribunals Ontario Portal. Your new file number is LTB-L-080612-22.

2686250 ONTARIO INC. (the 'Landlord') applied for an order to terminate the tenancy and evict TARAH D'AGUILAR (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on April 12, 2022. The Landlord's agent, Hana Krischke, the Landlord's legal representative, Bitá Di Lisi, The Tenant and the Tenant's legal representatives, Samuel Mason and Hannah Walters-Vida, attended the hearing.

Also present were, Lucas George and James MacDonald, whom were witnesses on behalf of the Tenants and previous employees of the Landlord.

The application is amended to correct the spelling of the Tenant's last name.

The Tenant raised issues pursuant to section 82 of the *Residential Tenancies Act, 2006* (the 'Act') and the parties were directed to file closing submissions by no later than October 21, 2022. The Tenant filed their closing submissions on October 25, 2022. The Landlord did not file any closing submissions as directed.

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. The Tenant was in possession of the rental unit on the date the application was filed. The Tenant was still in possession of the rental unit as of the date of the hearing.
3. The lawful rent is \$1,040.39. It was due on the 1st day of each month.

4. The parties agreed that the only amount outstanding to April 30, 2022 is the Landlord's application filing fee costs of \$186.00.

Section 82 Issues

Heat and Boiler Fire Issue

1. There was no dispute that the boiler caught fire on February 11, 2021 which put the entire building without heat for the weekend and then intermittent heat up to March 12, 2021. The Tenant testified that they felt very cold and had to sleep with lots of blankets and extra clothes. The Tenant was too concerned about causing a fire to use the heater the Landlord provided at night. During this month the pipes would shake and bang loudly which caused difficulty sleeping for the Tenant.
2. On February 11th the Landlord offered the Tenant a portable space heater. In order for the Tenant to receive the heater, they were required to sign a release form which indicated that the Tenant would be charged \$100.00 if the heater was damaged or the Tenant misused the appliance.
3. Although it is not uncommon for a boiler to eventually fail due to its useful life expectancy, in the current case, I find that the Landlord was well aware of the maintenance deficiencies with the Boiler since at least 2019 when a property standards order had been issued regarding it. Furthermore, the investigation of the boiler fire resulted in a finding that the fire was caused due to the maintenance deficiency. The Landlord provided no evidence that regular maintenance was performed on the boiler or that there was any contingency plan in place regarding the boiler, despite that the Landlords knowledge of the property standards report. The Landlords evidence was that they would maintain the boiler once in the fall before they fired it up for the season.
4. On February 28, 2021 there was also no dispute that there was a carbon monoxide leak in the building which required the fire department to attend the property. The Tenant testified that she was fearful and stressed out for a while because of it.
5. I am not satisfied that the Landlord kept the Tenants informed of the issue regarding the leak or regarding the boiler fire and heat issue in general. It was the Tenant's advocate, Emina Gamulin, that continued to follow up with the Landlord and they received little to no updates regarding the state of the heat or whether they should be concerned about carbon monoxide leaking into their units. This caused the Tenant to be fearful for their safety, especially during the Covid pandemic.
6. I therefore find that the Landlord breached their maintenance obligations by failing to maintain the boiler in the residential complex which caused the Tenant to be without heat and then to experience intermittent issues with the heat and loud banging from the pipes. I also find that the Landlord substantially interfered with the reasonable enjoyment of the rental unit on this basis and also on the basis that the Landlord failed to provide the Tenant with updates and expectations for the issue with the heat, the pipe sounds and the carbon monoxide leak. I also find the Landlords demand to have the Tenants sign an agreement that they would reimburse the Landlord \$100.00 if the heater was damaged or not returned a substantial interference.

7. The Landlord had a positive duty to provide the Tenant with adequate heat without attempting to charge additional fees to the Tenant for their own faulty heat issue. Since the Landlord ought to have been aware of the imminent failure of the boiler and took no action to prevent it, I find that the Tenant is entitled to a 50% abatement for the period of February 11, 2021 to March 12, 2021 when the heat was finally restored in the amount of \$520.20. This abatement also encompasses the issue with the boiler fire and the carbon monoxide leak.
8. The Tenant requested a 100% abatement for this period, however, the Tenant still had the full use of their rental unit during the heat interruption and the Tenant did have intermittent heat.

Water shut offs

9. It was the Tenant's undisputed evidence that there were a total of 33 water shut offs between March of 2020 to July of 2022 when the matter was first heard. Some of the water shut offs were planned with notice and others were turned off on the basis of emergencies. The Tenant submitted copies of the water shut off notices provided by the Landlord where the water was shut off with at least some notice. There were 17 notices in total.
10. The Tenant testified that they never knew when or for how long the Landlord would be shutting off the water. There were times when the water would be off overnight. The water shut offs were not as big of a problem as of the hearing date. There was a time when the water was shut off for 2 full days and overnight and the Landlord did nothing to provide the Tenant an explanation for the water shut off or any sort of accommodation regarding not having water for the two days. However, aside from the notice copies provided by the Tenant, the Tenant could not recall any other specific date that the water was off aside from May 18th to the 19th of 2021.
11. I do not find it unreasonable that the Landlord needs to shut the water off to the entire building on occasion as a result of the building being old and not having individual shut offs in each unit. The Landlord's evidence was that when a unit would become vacant, they would ensure there was a shut off valve put in the unit for future use. They have a plan in place to reduce the amount of water shut offs required for the entire building.
12. According to the Tenant's evidence, the water was shut off a total of 6 times between April 29, 2021 to May 19, 2021. Two of the notices indicate the water would be off for 2 consecutive days between the hours of 9:00am to 5:00pm. The Landlord failed to provide a reasonable explanation for the water being shut off for this period in time.
13. The Tenant requested \$100.00 in compensation for each of the 33 days that the water was shut off to their unit. However, I find that an abatement 50% per day for the 6 water shut offs between April 29th to May 19th appropriate under the circumstances for a total of \$102.60. Since the Tenant did not provide specific dates regarding the other shut offs outside of the notices, I am unable to determine that the water shut offs constitute substantial interference with the Tenant's reasonable enjoyment of the rental unit beyond the period between April 29, 2021 to May 19, 2021.
14. The Tenant is entitled to a total abatement of rent of \$622.80. This amount will be deducted from the amount owing to the Landlord for the filing fee.

It is ordered that:

1. The Landlord's application for eviction for non-payment of rent is denied on the basis that there are no outstanding arrears of rent.
2. The Landlord shall pay to the Tenant \$436.80. This amount includes an abatement of rent, less the \$186.00 application filing fee cost.
3. The Tenant may reduce their rent payable to the Landlord for May 2023 by the \$436.80 owing to the Tenant.
4. If the Landlord does not pay the Tenant the full amount owing on or before May 1, 2023, the Landlord will start to owe interest. This will be simple interest calculated from May 2, 2023 at 6.00% annually on the balance outstanding.

April 17, 2023
Date Issued

Terri van Huisstede
Member, Landlord and Tenant Board

15 Grosvenor St, Ground Floor
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.