



Order under Section 69 Residential Tenancies Act, 2006

Citation: Cole v Crowder, 2023 ONLTB 27582

Date: 2023-04-17

File Number: LTB-L-074451-22
(CEL-03238-21)

In the matter of: 176 Old Muskoka Road
Gravenhurst Ontario P1P1B6

Between: Dan Cole Landlord

And

Kim Crowder Tenant

Dan Cole (the 'Landlord') applied for an order to terminate the tenancy and evict Kim Crowder (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 26, 2023. The Landlord, their legal representative M. Calderon, the Landlord's witnesses, F. Cosgrove, A.Leeder,('A.L') and the Tenant 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 is \$1,500.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$49.32. This amount is calculated as follows: \$1,500.00 x 12, divided by 365 days.
5. The Tenant has paid \$10,500.00 into the LTB since the application was filed.
6. The Tenant has paid \$1,500.00 to the Landlord since the application was filed.

7. The parties agree that the rent arrears owing to January 31, 2023 are \$10,500.00.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$1,500.00 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.
10. Interest on the rent deposit, in the amount of \$48.31 is owing to the Tenant for the period from April 7, 2021 to January 26, 2023.

SECTION 82 ISSUES

11. Section 82 of the *Residential Tenancies Act, 2006* (the 'Act') states, in part:

82 (1) At a hearing of an application by a landlord under section 69 for an order terminating a tenancy and evicting a tenant based on a notice of termination under section 59, the Board shall permit the tenant to raise any issue that could be the subject of an application made by the tenant under this Act ...

12. At the hearing the Tenant raised the following maintenance issues in relation to section 82 and section 20 of the Act;

- Black Mold;
- Issues with Kitchen Appliances (fridge, stove, dishwasher);
- Issue with the Back Door;
- A Flood in the Rental Unit; and
- Toilets not Functioning Properly

13. Section 20 (1) of the Act sets out a Landlord's maintenance obligations; it states:

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.

14. In *Onyskiw v. CJM Property Management*, 2016 ONCA 477 (*Onyskiw*) (CANLII) the Court of Appeal for Ontario determined that a contextual approach should be adopted when considering a landlord's potential breach of subsection 20 (1). A breach will not be found if the Landlord's response to a maintenance issue was reasonable in the circumstances.

Black Mold

15. The Tenant testified that on June 15, 2021, she notified the Landlord by leaving voicemails that there was black mold in the basement cellar of the rental unit. The Tenant submits that the issue is still on-going.
16. The Tenant says that because of the mold she is unable to use the seller in the basement to store non perishable food. She has sealed the door and generally does not open it. The Landlord denies that there is mold present in the cellar.
17. During the hearing the Tenant relied on photographs of the seller. Initially the Landlord denied that these photos were of the Tenant's unit- however given the flexible nature of electronic proceedings, I requested that the Tenant show me the cellar using the camera on the device she was using to participate in the proceeding. During the hearing, we were able to observe the seller in real time. The Tenant did not provide any documentary evidence confirming the presence of mold.
18. On any application before the Board, the person who alleges any particular incident or event occurred has the burden of leading sufficient evidence to establish that it is more likely than not that their version of events is true. In this case that burden falls on the Tenant. For the reasons that follow, the Board finds that the Tenant has led insufficient evidence to establish that there is black mold in the seller.
19. The Tenant has the obligation of proving that the Landlord is in breach of the Act. Where there is no breach, the Tenant is not entitled to remedy. Based on the evidence before me, I am not satisfied that there is a presence of mold in the cellar. Although I do not find that the Landlord is in breach on this application it does not mean that the issue is resolved. I encourage the Landlord to do their own due diligence with respect to this issue. This claim is dismissed.

Appliances

20. The Tenant says that the appliances started to have issues in or around the early summer of 2021. The stove issue began in June of 2021 and the fridge and dishwasher were not working properly in July of 2021.
21. The Landlord says that they did not become aware of the issues until January 2022, when the Tenant filed paperwork with the Board to raise her issues.
22. There was evidence submitted at the hearing that show correspondence between the parties on January 27, 2022. The best evidence before me with respect to when the Landlord became aware of these issues are theses emails. Therefore, I find that for all intents and purposes the Landlord effectively became aware effective January 27, 2022.

23. There is no dispute that a handyman with the Landlord came to the unit on January 14, 2022, February 2, 2022 and inspected the fridge and stove. The issue persisted after the inspection and the Tenant followed up with the Landlord via email on February 3, 2022, February 15, 2022, and February 18, 2022. After the inspection on February 2, 2022, the Landlord did not take any further action.
24. The Landlord says that the issue with respect to the fridge is overcrowding of food caused by the Tenant, that the Tenant altered the stove themselves and therefore is not responsible, and that the dishwasher was replaced by the Tenant and since she owns this appliance- it is her responsibility to maintain.
25. During the hearing the Landlord called A.L as a witness. He testified that he has 15-20 years experience with appliances from dealing with them throughout his life. A.L confirmed that he does not have any professional training or schooling.
26. The first time A.L attended the property with respect to these issues was on January 14, 2022, he stated that the burners on the stove were not plugged in properly, he had also noticed that the Tenant had self remedied the oven door by adding additional bolts and screws to fasten the oven door to the stove. The issue with the fridge seemed to be a circulation issue as he claimed that the Tenant had too much food stored in it. He also stated that during his inspection he had cleared dog hair from the bottom part of the fridge.
27. There was a photo of the fridge relied on at the hearing, however I do not see evidence of over crowding.
28. As already mentioned, the Landlord believes that the Tenant caused the damage to the stove. The Landlord has an obligation under subsection 20(1) of the Act to complete any required repair regardless of how the damage occurred. If the Landlord believes that the Tenant should be held responsible for the repair costs the Landlord may file their own application with the Board.
29. The Tenant followed up via email with the Landlord regarding the fridge not working after the initial inspection with the handyman. Since the Landlord has not taken further action, I find that they have not acted reasonably in the circumstances.
30. I find that the Landlord has not repaired the stove or responded to the fridge in a reasonable amount of time, the quantum of abatement will be addressed below.
31. The issue with the dishwasher is that it quits mid cycle, does not drain or fill properly.
32. There is no dispute that there was a dishwasher in the rental unit prior to the Tenant moving in. The Landlord says that the Tenant replaced the dishwasher with an identical make and model as the original one in the rental unit. The Tenant says this is not true and

that she only repaired the existing one with second hand parts and that the dishwasher currently in the rental unit is the one that came with the rental unit.

33. The evidence submitted is insufficient to determine whether the Tenant replaced the dishwasher with her own. The Landlord says that the dishwasher that was allegedly replaced was replaced by an identical make and model. The Tenant states that it is the original one from the inception of the tenancy. There is no dispute that there was a dishwasher in the rental unit at the inception of the tenancy. Therefore, I find it only reasonable that the Landlord has the obligation of maintaining the appliance.

Backdoor Issue

34. There is no dispute that there was an issue with respect to the backdoor of her closed in porch/mudroom. During the hearing the Tenant used the video camera from the device she was participating with to show me the state of the back door. It was clear that there was a gap between the door and the frame so large that I could clearly see the light shining through.

35. The Landlord would have received notice of this issue with the Tenant's disclosure on January 27, 2022, and the issue was still ongoing at the time of the hearing. The Landlord submitted that as it was a mud room the issue was somewhat confined to that room. There was another set of doors that lead into the Tenant's rental unit which prevented heat from escaping in the winter.

36. The Tenant submitted that this impacts her more in the winter as snow and rain sometimes is let in by the crack. The "mud room" connects the basement to the upstairs and so she passes through there frequently when doing laundry and exiting through the back door.

37. I find that the Landlord has not acted reasonably in the circumstances in repairing the issue pertaining to the back door. Although the impact on the Tenant may not be extensive, the solution to the issue is not that it gets ignored by the Landlord. There is some impact on the Tenant and therefore an abatement shall be awarded.

Flood in the Rental Unit

38. The Tenant alleges that she reported an issue with respect to a flood in the basement of the rental unit on June 15, 2021, by leaving voice messages with the Landlord's legal representative and the Landlord. The Tenant relied on email correspondence showing that the first time she notified the Landlord in writing was on June 23, 2021, the first email was sent June 23, 2021, at 6:10pm and the Landlord replies at 8:11pm on the same evening informing the Tenant that they are sending a plumber the next day.

39. There is no dispute that the flood issue was resolved by June 24, 2021. At the hearing the Landlord relied on a copy of the invoice from the plumbing company who noted on the

invoice that the cause of the flood was due to tampons being flushed down the toilet, which the Landlord says was the Tenant's fault.

40. Although the Tenant submits that she notified the Landlord on June 15, 2021, the best evidence before me is that the Landlord was notified June 23, 2021. I say this because the Tenant supplied emails and text messages surrounding this issue, however, did not supply call logs or other like document to support that they called the Landlord that day. I would assume that if the Tenant wanted to rely on the fact that they called the Landlord on June 15, 2021, they would have supplied those documents to the Board.
41. In the application, the Tenant seeks to be compensated for their damaged personal items as a result of the flood as well as a rent abatement for the time that they loss use of the basement. As stated above, where a Landlord acts reasonably in the circumstances- no abatement shall be awarded. The Landlord became aware June 23, 2021, and the Landlord sent a plumber the next day and the issue was rectified. I find the Landlord acted reasonably in the circumstances once they became aware of the issue.
42. As per the tenants being compensated for their belongings. In the absence of evidence to support that the flood was caused by the actions or inactions (negligence) of the Landlord, I must turn to *McQuestion v. Schneider*, [1975] O.J. No. 2279, which stands for the proposition that section 20 of the Act does not impose an absolute liability upon a landlord for an injuries or damages that may be caused by a latent defect, of which the landlord had no knowledge, nor could reasonably be expected to have such knowledge.
43. The Tenant did not have renters' insurance. I canvased the Tenant during the hearing with respect to the reason for not having insurance- to which the Tenant replied that she did not have it at the time of the flood. She obtained it on June 21, 2021, after receiving the lease on June 14, 2021.
44. Section 16 of the Act states that parties who are entitled to a claim have the obligation to take reasonable steps to minimize their losses. I truly sympathize with the Tenant in this situation. A flood It is undoubtably a terrible and catastrophic event. However, the flood in this circumstance can be best characterized as an accident. The purpose of insurance is to cover the cost of accidents. The Tenant had the opportunity to obtain insurance prior to June 21, 2021 but did not do so.
45. Respectfully, regardless of whether the Tenant was required to have insurance under the tenancy agreement, it is only logical that if the Tenant's belongings were of specific importance, then the Tenant ought to have taken steps to insure those belongings. Therefore, the Tenant's claim to be reimbursed for her possessions is denied.

Toilets not Functioning Properly

46. On or about January 5, 2022, or January 6, 2022, there was an issue with the toilet not flushing properly in the rental unit. The Tenant notifies the Landlord's legal representative as they respond via email on January 6, 2022- informing the Tenant that the Landlord was prepared to have a plumber look at the issue. The Tenant responds later that same day informing them that as there was no response from the Landlord, they had retained a plumber who was on site looking at the issue.
47. At the hearing the Tenant relied on the invoice totaling \$734.50 and seeks to be compensated for the out-of-pocket expense.
48. The Landlord submits that they should not be responsible for the invoice as they were not provided an adequate opportunity to respond and rectify the issue. For the following reasons, I find that the Tenant shall be reimbursed for this expense.
49. The invoice supplied clearly shows a detailed scope of work that was performed on the date of the service call, outlines the labour of the workers and time spent on the property, and is on a company letterhead. Therefore, I find that the invoice is legitimate and also reasonable.
50. The Landlord also showed a willingness to send a plumber in their communication with the Tenant, so it is more than likely than not that the Landlord would have incurred a similar fee to that of the Tenant's invoice in any event.
51. There was some delay in the Landlord getting back to the Tenant by at least a couple to several hours. The Landlord requested that on going communication be provided through their legal representative and given that the Tenant was without a functioning toilet- the issue is somewhat urgent in nature. I will also note that other repairs in the rental unit were left outstanding, and so it is fair to assume that the Tenant did not have the most confidence that this issue would be addressed in a timely manor. As such I find it fair in the circumstances that the Tenant be reimbursed for the invoice.

CALCULATION OF ABATEMENT:

52. Section 82(3) of the Act states that if a Tenant raises an issue under subsection (1) the Board may make any order in respect of the issue that it could have made had the tenant made an application under this Act.
53. Section 29(2) of the Act sets out a one-year time limitation with respect to any alleged conduct giving rise to the application. As already stated, I find that the Landlord became aware of these issues on January 27, 2022, however all of these issues were still ongoing

as of the date of the hearing on January 26, 2023, as such an abatement shall be awarded for that time period.

54. The Tenant requests an abatement of \$500.00 globally for all the issued raised in this application, which equates to approximately one third of the monthly rent.
55. An abatement of rent is a contractual remedy on the principle that if you are paying 100% of the rent then you should be getting 100% of what you are paying for and if you are not getting that, then a tenant should be entitled to abatement equal to the difference in value. In other words, an abatement of rent can be viewed as compensation to the Tenant for inconvenience and loss of use of the rental unit.
56. In considering the evidence before me, as well as the impact it had on the Tenant, I find that a 10% rent abatement for the months of January 2022 to January 2023 to be fair in the circumstances. I say this because the Tenant did not lose full function of her fridge or stove, although the dishwasher was not working properly it does not preclude the Tenant from being able to wash her dirty dishes. With respect to the backdoor, although it is a disrepair issue- it did not have a major functional impact on the Tenant.
57. $\$1,500.00 \times 0.10 = \150.00 per month for 12 months = \$1,800.00- an order for this amount shall issue.
58. In addition to a rent abatement, an order will issue that the Landlord shall complete all necessary repairs, failing which the Tenant may deduct an ongoing abatement from the monthly rent until the repairs are completed.

RELIEF FROM EVICTION

59. 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.
60. The Tenant submitted at the hearing that she would like to stay in the rental unit. The Board has 10,500.00 of rent that the Tenant has paid in since the application was filed.

She also stated that she had \$4,000.00 that she could pay to the Landlord immediately and then requested to pay the balance (approximately \$6,500.00) over three months.
61. I spent some time in the hearing canvassing with the Tenant whether this repayment plan was financially feasible for her and based on the evidence provided by her, I can conclude that it was.
62. The Landlord opposed the payment plan and requested a "standard order".

63. The Tenant is a single mom with 4 dependent children and has lived in the unit since 2021.
64. On an application such as this, one of the Landlord's main interest is being paid back the rent they are owed within a reasonable amount of time. This repayment plan essentially has the Landlord made hole within 3 months, which I find is reasonable in the circumstances. Given the length of the tenancy and the tenants circumstances, I find that this payment plan is reasonable and therefore granted.

It is ordered that:

1. The Landlord shall pay a rent abatement to the Tenant in the amount of \$1,800.00, which represents 10% of the monthly rent for the period January 2022 to January 2023.
2. The Landlord shall also pay to the Tenant \$734.50, which represents the Tenant's out of pocket expenses.
3. The total the Landlord owes the Tenant is \$2,534.50, this amount shall be deducted from the total arrears owed.
4. The Tenant shall pay to the Landlord \$12,651.50 (less any payments made by the Tenant). This amount includes rent owing to January 31, 2023, and the cost of filing the application, new rent that has come due since the hearing, less the \$10,500.00 paid into the Board, and less the amount the Landlord owes the Tenant pursuant to paragraph 3 above.
5. The Tenant shall pay to the Landlord the amount set out in paragraph 4 in accordance with the following schedule:
 - a) The Tenant shall pay \$4,000.00, to the Landlord on or before April 30, 2023.
 - b) Assuming the payment is made in accordance with paragraph 5(a) above the balance should be \$8,651.50, which will be divided equally into 3 payments set out below.
 - c) The Tenant shall pay \$2,883.83 on or before May 21, 2023
 - d) The Tenant shall pay \$2,883.83 on or before June 21, 2023
 - e) The Tenant shall pay \$2883.84 on or before July 21, 2023
6. The Tenant shall also pay to the Landlord new rent on time and in full as it comes due and owing for the period May 1, 2023 to July 1, 2023, or until the arrears are paid in full, whichever date is earliest.

7. 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 paragraph 4 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 April 30, 2023.
8. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
9. \$10,500 together with any accrued interest that the Tenant paid into the LTB in trust shall be released to the Landlord by the LTB.*
10. No later than May 1, 2023, the Landlord shall ensure that the Tenant has a fully functioning fridge and stove and shall also seal the back door as to ensure that there are no gaps between the door frame and the door to the "mudroom"
11. If the Landlord fails to complete the repairs in accordance with paragraph 10, the Tenant may deduct \$150.00 from the monthly rent starting May 2023, until the repairs are completed.

April 17, 2023

Date Issued

Curtis Begg

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.

*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice