



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

Citation: Boparai v Park, 2023 ONLTB 14099

Date: 2023-04-12

File Number: LTB-L-002785-21
LTB-T-028040-22
LTB-T-073623-22
(CET-03413-22
and CET-04917-22)

In the matter of: A, 7225 KING ST
BOLTON ON L7C0V4

Between: Davinder S. Boparai Landlords
Ramanjit Kooner

And

Bonnie Park Tenants
Ian W. Fulford
Vickie McGee

Davinder S. Boparai and Ramanjit Kooner (the 'Landlords') applied for an order to terminate the tenancy and evict Bonnie Park, Ian W. Fulford and Vickie McGee (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

The Landlords also applied for an order to terminate the tenancy and evict the Tenants because the Landlords, in good faith, require possession of the rental unit for the purpose of residential occupation for at least one year

The Tenants also applied for a reduction of the rent charged for the rental unit due to a reduction or discontinuance in services or facilities provided in respect of the rental unit or the residential complex

The Tenants also applied for an order determining that the Landlords have substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants or by a member of the Tenants' household and the Landlords failed to meet the Landlords' maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards.

This application was heard by videoconference on August 17, 2022 and November 3, 2022.

The Landlord, Ramanjit Kooner, the Landlords' Legal Representative, Manjit Garcha, the Tenants, and the Tenants' Legal Representative, David Borrie, attended the hearing.

Determinations:

L1 Application

1. The Landlords served the Tenants 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 Tenants were in possession of the rental unit on the date the application was filed.
3. It is undisputed that the Tenants vacated the rental unit on January 7, 2022 and rent arrears are calculated up to the date the Tenants vacated the unit.
4. The lawful rent is \$1,800.00.
5. The Tenants have paid \$1,800.00 to the Landlords since the application was filed.
6. The last month's rent deposit was applied to the rent for December 2021.
7. The rent arrears owing to January 7, 2022 are \$414.26.
8. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. Interest on the rent deposit, in the amount of \$39.50 is owing to the Tenants for the period from February 1, 2019 to December 31, 2021.

L2 Application

10. As the Tenants vacated the rental unit on January 7, 2021, the Landlords' L2 application is moot. The Landlords requested consent of the Board to withdraw the application.
11. In accordance with subsection 200(4) of the Act, I consent to the withdrawal of the application.

T3 Application – reduced or discontinued service

12. The Tenants have lived in the rental unit since February 1, 2019 and remained in possession until January 7, 2022.
13. The Tenants' T3 application seeks a rent reduction for the purported discontinuance of the use of the basement of the rental unit from August 1, 2019 to the date they vacated the rental unit in the amount of \$1,780.00.
14. The claim arises from the Landlords allegedly converting the basement to be used as an office for their trucking business.
15. The Tenant, Bonnie Park (B.P.) testified that when they initially viewed the rental unit, the Landlords showed them the basement and the laundry facilities. B.P. stated the basement was empty at the time of viewing and assumed the rental unit included the entire basement.

16. B.P. stated the Landlords, without notice, moved their business office into the basement sometime in September 2019 eliminating their use of the basement which included the laundry facilities.
17. In cross-examination, B.P. was asked how they did their laundry to which she responded she went to a laundromat. She added the Landlords moved the washer and dryer to the sunroom but did not elaborate on whether or not she continued to use a laundromat or if she used the equipment in the sunroom.
18. The Landlord, Ramanjit Kooner (R.K.), testified the basement was never included as part of the rental premises. She stated the Tenants were shown the basement for the purpose of the laundry facilities and argued the basement was not empty. R.K. stated the dispatch office for her company has been located in the basement since they purchased the property in February 2016. She also stated the door to the basement is not locked thus providing the Tenants with access to the laundry facilities. She further added the washer and dryer were never moved to the sunroom.
19. The lease agreement, provided by the Tenants' Legal Representative as evidence, was not helpful in describing what exactly the Tenants were renting. This agreement consisted only of the monthly rent amount and the deposit required. The actual address of the rental unit was not included thus I must rely on the testimony of B.P. and R.K.
20. When I considered the conflicting testimony of the Tenant and the Landlord, I preferred the Landlord's evidence over the Tenant's evidence. B.P. offered no evidence they used the basement for any purpose – storage or recreational – and provided no documentary evidence they were forced to go elsewhere to do their laundry.
21. On the totality of the evidence, I am satisfied that the basement was not included as part of the rental unit and the Landlords have used the basement to operate their business since they purchased the house in February 2016. The Tenants were never denied access to the basement to use the laundry facilities nor was a discontinuance of this service included in the T3 application. The Tenants' T3 application is therefore not proven and dismissed.

T2 Application – substantial interference

Air conditioning

22. The Tenants' application alleges that the Landlords have substantially interfered with their reasonable enjoyment of the rental unit. For the reasons that follow, I find the Tenants have proven this claim.
23. The remedy sought by the Tenants under the T2 application is 30% of one month's rent or \$540.00.
24. B.P. testified that between August 28, 2021 to September 14, 2021 the air conditioning in the rental unit was not being monitored or maintained. She stated the thermostat is located

in their unit however at certain times during the months of August and September, 2021, the air conditioning was not functioning and it became extremely hot and uncomfortable in their unit. She stated all three Tenants are seniors and were concerned about their health as the heat was unbearable.

25. B.P. stated she notified the Landlords on August 28, 29, 30, September 2, 3, 13, and 14, 2021 that the air conditioning was not either not working or it was turned off. She further stated the air conditioning was turned off from September 3, 2021 – September 8, 2021 and despite her complaints to the Landlords, the issue was not resolved.
26. R.K. stated that there were no operating issues with the central air conditioning. As the office for her company is located in the basement of the property and she had no access to the thermostat, the Tenants would lower the temperature in the house which would cause the basement to be extremely cold. She stated her employees found the basement too cold with the air conditioning on so, at times, she would need to turn it off by disengaging the breaker as the Tenants refused to raise the thermostat to a level comfortable for the entire house. R.K. stated when the Tenants complained the air conditioning was not working, she advised the Tenants of the temperature issue in the basement but they did not change the behaviour. She claimed, on occasion, when the basement was cold, she observed the windows and doors open in the Tenants' unit which caused the air conditioning to operate at a high level and she had no choice but to shut the system off.
27. Based on the evidence before me, I am satisfied the Landlords have substantially interfered with the Tenants' reasonable enjoyment of the rental unit. The Tenants did not receive a service which they contracted for and breach of contract can amount to substantial interference which is the claim in the Tenants' T2 application. I say this because the Landlord deliberately shut off the air conditioning to appease her employees and did not take the Tenants' potential health risks into consideration when doing so.
28. In my view, the rent abatement requested by the Tenants is reasonable under the circumstances and therefore the Landlords will be ordered to pay the Tenants \$540.00.

T6 Application

29. A T6 application is brought under Section 20 of the Act, which states as follows:
 - (1) 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.
 - (2) Subsection (1) applies even if the tenant was aware of a state of non-repair or a contravention of a standard before entering into the tenancy agreement.
30. The Tenants allege that the Landlords failed to maintain the unit in a good state of repair, specifically regarding the following:

- a) Inoperative Dishwasher
- b) Fuses and Electrical Outlets malfunctioning
- c) Furnace and Heat issues
- d) Water issues

31. The remedies sought by the Tenants under the T6 application comprise of:

- e) A rent abatement equivalent to 5% of the monthly rent for four months or \$360.00 for the dishwasher
- f) A rent abatement equivalent to 5% of the monthly rent for sixteen months or \$1,440.00 for the issues with the electrical outlets and fuses
- g) A rent abatement equivalent to 30% of the monthly rent for one month or \$540.00 for the heat issues
- h) A rent abatement equivalent to 5% of the monthly rent for three months or \$270.00 for the water issues
- i) Out-of-pocket expenses in the amount of \$414.00 for the purchase of water and a water cooler and laundry expenses.

32. The alleged two maintenance issues in paragraph 28 (a) and (b) occurred more than one year before May 18, 2022, the dates the Tenants filed this application. While all limitation periods were suspended in Ontario during the period March 16, 2020 to September 14, 2020 pursuant to an order under the Emergency Order Management and Civil Protection Act, this application was still filed more than 1 year after the detection and resolution of these two maintenance issues - even after the period of suspension is accounted for. These maintenance issues were not on-going issues that continued into the suspension adjusted limitation period that started on September 29, 2019. Therefore, given the one-year limitation period contained in s. 29(2) of the Act, the allegations in paragraph 28 (a) and (b) cannot be considered.

33. The alleged two maintenance issues in paragraph 28(c) and (d) occurred within one year of the filing of the application therefore, I am satisfied that these two allegations can be considered pursuant to s.29(2) of the Act.

34. For the reasons below, I am not satisfied the Landlords failed to meet the Landlords' obligation under subsection 20(1) of the Act.

Furnace and Heat Issues

35. The Tenants claim from October 17, 2021 to October 28, 2021 there were issues with no heat in the rental unit.

36. In her testimony, B.P. stated that she contacted the Landlords on October 17, 2021 advising there was no heat in the rental unit. She stated the Landlord indicated the propane tank may need to be filled and would contact the supplier.

37. On October 19, 2021, B.P. contacted the Landlords again, stating they did not have heat. She stated the furnace was eventually repaired but it was not done until a month to six weeks after she first reported the issue to R.K.

38. The Tenants' Legal Representative submitted a text message conversation between B.P. and R.K as evidence which shows B.P. advising R.K. of the heat issue. It also shows that R.K. did not respond until October 28, 2021. In her response R.K. wrote:

"Can you please check what the temperature set at as it cold downstairs. Can you please confirm as we are on call with mechanic. Please let us me know. Can we come in to check the thermostat"

B.P. responded: *"Set at 72 yes cold up here for days we are going out for a while will be back around 5"*

39. B.P. stated that during the time the furnace was inoperable they were forced to buy blankets and additional clothing to stay warm. She added the lack of heat caused them to get sick. B.P. did not offer any documentary evidence to support these claims.
40. In cross-examination, B.P. was asked if she contacted the City of Caledon, Property Standards, with any issues as they related to maintenance issues in the rental unit; B.P. denied contacting Property Standards.
41. In her testimony, R.K. conceded there was a problem with the furnace and she contacted a contractor to remediate the issue. She stated the furnace was repaired on October 22, 2021 and no further complaints were received from the Tenants.
42. The Landlords' Legal Representative submitted an invoice from the contractor, Harwinder Randhawa, in the amount of \$350.00 for the repair to the furnace.
43. R.K. testified that on October 23, 2021 she met with a Town of Caledon by-law officer at the rental unit as a complaint with respect to heat had been received from the Tenants. The Landlords' Legal Representative submitted the notes of By-Law Officer Cory Kirchin as evidence. In these notes, Mr. Kirchin recorded the temperatures in each room of the rental unit.

1. Livingroom 21.6 degrees Celsius
2. Kitchen 22.3 degrees Celsius
3. Bathroom 23 degrees Celsius
4. Bedroom 1 23.2 degrees Celsius
5. Bedroom 2 23.3 degrees Celsius

44. R.K. testified she received another visit from By-Law Officer Kirchin on October 28, 2021 in regard to a complaint received by the Tenants about the heat. She stated she advised him the furnace had been repaired and was to provide a copy of the contractor's receipt to Officer Kirchen. She further stated this was done, and the file was closed.

45. The Landlords' Legal Representative submitted a list of by-law complaints filed by the Tenants with the City of Caledon. This list included the dates By-Law Officer Kirchen

attended at the rental unit in October 2021 as well as complaints filed by the Tenants in July 2022, after they vacated the rental unit.

Water issues

46. B.P. stated the water in the rental unit is supplied by a well. She testified that on November 2, 2021, she had the water in the rental unit tested as she was concerned about its safety. The water was tested again on November 17, 2021. B.P. stated after each test she was advised the water was unsafe to drink.
47. The Tenants' Legal Representative submitted two water analysis reports as evidence dated November 4, 2021 and November 18, 2021 which indicate the water was unsafe to drink. He also submitted an email from the Public Health Inspector as evidence which stated in part:

The water sample for 7225 King St in Caledon came back bad and is not safe from drinking. The counts were Total coliform >80 and E.coli 56. Please be advised that an alternative source of drinking water must be used.

48. B.P. stated that on November 2, 2021, she gave a copy of the report to the Landlords who fixed the water filtration system. She further stated that after the repair the water was deemed to still be unsafe. In light of the email received from the Public Health Inspector, B.P. stated she bought a water cooler and bottled water. She was unable to provide any receipts of these purchases.
49. In cross-examination, B.P. was asked if she recalled receiving an email from Rebecca Gunness from the City of Caledon. B.P. did recall the email but stated she was incorrect as she had been told the water was unsafe. She was asked again if she filed a complaint with the city against the Landlords to which she stated no, she had not. When asked if she did not file a complaint, how would the city know about the water issue, B.P. was unresponsive.
50. In her testimony, R.K. disputed the claims of B.P. She stated she was contacted by the City of Caledon with regard to water contamination at the rental unit. She testified she was advised by By-Law Officer Gunness that after testing, the water at the property was not contaminated.
51. The Landlords' Legal Representative submitted three water analysis reports dated November 10, 2021, November 24, 2021, and December 3, 2021 as evidence. Each of these report stated there was no evidence of fecal contamination and the water supply was deemed safe for consumption.
52. The Landlords' Legal Representative submitted the email from By-Law Officer Gunness to B.P. dated January 20, 2022 in which she wrote in part:

All water samples obtained by myself did not show any evidence of contamination to render the drinking water as not potable and therefore, no violation was found to warrant the issuance of a Vital Services Order.

53. The Landlords' Legal Representative also submitted an email exchange, dated December 6 and 7, 2021, between By-Law Officer Gunness and Public Health Inspector, Ruth Solski

as evidence. In this email, Ms. Solski was satisfied there was no water contamination at the rental unit and closed the file.

54. In cases like this one when contradictory testimony and evidence are given and when both parties appear truthful and credible, the person who bears the burden of proof must always fail because the onus is on them to lead sufficient evidence to establish their version of events is more likely than the other person's. This is the Tenants' T6 application and the burden is on them.
55. After review of all the evidence, I prefer the evidence of the Landlords over that of the Tenants. I say this because the documentary evidence shows that when the complaints were raised by the Tenants, the Landlords sought out a contractor to repair the furnace in a reasonable time frame and worked diligently with the City of Caledon Property Standards to ensure the Tenants had potable water.
56. Based on the totality of evidence before me, I am not satisfied the Landlords breached their maintenance obligations under subsection 20(1) of the Act and I find the Landlords acted reasonably when addressing both the heat and water issues. As such, I am denying the Tenants' claims and the T6 application will be dismissed.

It is ordered that:

Regarding the L1 Application:

1. The tenancy between the Landlords and the Tenants is terminated as of January 7, 2022, the date the Tenants moved out of the rental unit.
2. The Tenants shall pay to the Landlords \$560.76. This amount includes rent arrears owing up to the date the Tenants moved out of the rental unit, the cost of filing the application, the rent deposit and interest the Landlord owes on the rent deposit.

Regarding the L2 Application:

3. The Landlords' application is dismissed.

Regarding the T3 Application:

4. The Tenants' application is dismissed.

Regarding the T2 Application:

5. The Landlords shall pay to the Tenants a rent abatement of \$540.00.
6. This amount will be set off against the amount owed by the Tenants to the Landlords for the L1 Application.

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7. The total amount owed by the Tenants to the Landlords is \$20.76.
8. If the Tenants do not pay the Landlords the full amount owing on or before January 22, 2023, the Tenants will start to owe interest. This will be simple interest calculated from January 23, 2023 at 6.00% annually on the balance outstanding.

April 12, 2023
Date Issued

Susan Priest
Member, Landlord and Tenant Board

15 Grosvenor St, 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.

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**Schedule 1
 SUMMARY OF CALCULATIONS**

A. Amount the Tenants must pay as the tenancy is terminated

Rent Owing To Move Out Date	\$4,014.26
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$1,800.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$1,800.00
Less the amount of the interest on the last month's rent deposit	- \$39.50
Less the amount the Landlords owes the Tenants for an abatement	-\$540.00
Total amount owing to the Landlords	\$20.76

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