



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

Citation: Wignarajah v Kathirkamanathan, 2023 ONLTB 30147

Date: 2023-04-06

File Number: LTB-L-003337-22

In the matter of: BASEMENT, 168 WHARNSBY DR
SCARBOROUGH ON M1X1Z4

Between: Lohini Manoharan and Manoharan Wignarajah Landlord

And

Kuganeswaran Kathirkamanathan and Tenant
Tharmini Tharmalingam

Lohini Manoharan and Manoharan Wignarajah (the 'Landlord') applied for an order to terminate the tenancy and evict Kuganeswaran Kathirkamanathan and Tharmini Tharmalingam (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on July 20, 2022.

The Landlord and his representative Thirusenthuran Sivapatham 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. The Tenant was in possession of the rental unit on the date the application was filed.
3. The Tenant vacated the rental unit on July 14, 2022. Rent arrears are calculated up to the date the Tenant vacated the unit.
4. The lawful rent is \$1,100.00. It was due on the 1st day of each month.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to July 14, 2022 are \$8,439.28.
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 \$1,100.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.
9. Interest on the rent deposit, in the amount of \$9.40 is owing to the Tenant for the period from October 28, 2020 to July 14, 2022.

Arrears of Rent

10. The Tenant claim that the Landlord harassed him continuously about rent arrears and disputed the arrears because the Landlord did not deduct his February rent payment from this rent arrears. The Tenant claims he raised the issue with the Landlord on February 18, 2022, but the Landlord maintained he did not receive February 2022 rent payment from the Tenant. As such, the Tenant decided he would only pay rent once ordered by the board.
11. The Landlord provided documentary evidence as to all the payments received by the Tenants. The Landlord's documentary evidence consists of a detailed rent ledger and copies of all the Interac payments received from the Tenants. The Landlord's documentary evidence supports the oral evidence at the hearing that the Tenants owe arrears of rent in the amount of \$8,439.28 for the rental period ending July 14, 2022.
12. The Landlord testified that he did not behave in a manner considered as harassment towards the Tenant and submitted text messages sent to the Tenant on August 07, 2021, September 04, 2021, November 06, 2021, and December 06, 2021, as evidence to the Board to support his claim. The evidence shows a polite request from the Landlord to the Tenants to send the rent payment to him accordingly.
13. On a balance of probabilities, I am satisfied that the Landlord correctly calculated the arrears of rent owed for the rental period of April 2020 to August 2020. In making this finding, I considered the clear, concise and detailed evidence of the Landlord which establishes the arrears of rent owed. I find the Tenants' evidence was vague and lacked details to establish their claim that the Landlord did not account for all the partial payments of rent they believe they made which would result in the Landlord's calculations of arrears of rent being incorrect. The Landlord's rent payment reminders sent to the Tenant do not constitute harassment according to section 23 of the Act. Given the Landlord's detailed evidence, which included records of electronic payments, I would have expected the Tenants to provide proof of additional payments, electronic or otherwise.

Section 82 Issues

14. The Tenants raised the following issues pursuant to section 82 of the Residential Tenancies Act, 2006 (the 'Act'):
 - ✦ Cockroach Infestation
 - ✦ Cooking Stove Coil
 - ✦ Fire Extinguisher
 - ✦ Heat and air condition

15. The Tenant claims he informed the Landlord on November 01, 2020, about the **cockroach infestation** in his rental unit. The Tenant claims that the Landlord did not address this issue until he vacated the unit on July 14, 2022. The Tenant claims he informed the Landlord on November 01, 2020, that one of the **stove's coils** had not been working, and the Landlord did not repair the coil until May 28, 2022.
16. The Tenant claims no **fire extinguisher** was available in their unit until May 28, 22. The Tenant testified that he called the city between September and October 2021, but the city asked the Tenant to contact the fire dept, which he did not. The Tenant claims there is a problem with the **heat and air condition** in the unit because there were times when the heat temperature was high, or the unit was cold. The Tenant did not submit any photographs, temperature readings, or other documentary evidence to substantiate his claims.
17. The Landlord claims that the Tenant only informed him of the **cockroach infestation** on September 21, 2021, when he started missing rent payments. The Landlord testified that there was no proof of infestation when he followed up with the Tenant. The Landlord testified that all four **coils of the stove** were working until the Tenant informed him on March 21, 2022, when the Landlord had just completed toilet repairs in the rental unit. The Landlord replaced the coil on March 23, 2022 and provided a receipt of the purchased coil to the board as evidence. The Tenant did not challenge the Landlord's evidence.
18. The Landlord testified that there was a **fire extinguisher** in the unit, and the Tenant informed him that it was not working. The Landlord submitted a Home Depot receipt showing that he replaced the fire extinguisher on April 23, 2022. The Landlord testified that the Tenant never informed him that the **heat and cooling** temperatures in the rental unit were problems that required repairs but instead received occasional text messages from the Tenant to adjust the thermostat whenever he was cold due to the air conditioner. There was never an issue about insufficient heat. The Tenant did not challenge the Landlord's evidence.
19. Section 20(1) of the Act states: A landlord is responsible for providing and maintaining a residential complex, including the rental units, in a good state of repair and fit for habitation and complies with health, safety, housing and maintenance standards.
20. In *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477, the Court of Appeal held that it is necessary to take a contextual approach to determine whether a landlord has breached its maintenance obligations under section 20(1) of the Act and a landlord will not be found liable for such a breach if the Landlord responded to the maintenance issue reasonably in the circumstances. In *Onyskiw*, the Court of Appeal also specifically considered the Landlord's mitigating efforts as part of its contextual analysis.
21. Subsection 30(2) of the Act states: "*In determining the remedy under this section, the Board shall consider whether the tenant or former tenant advised the landlord of the alleged breaches before applying to the Board.*" This section of the Act was intended to reflect case law basically stating that if a landlord does not know about a particular disrepair problem then the landlord cannot and should not be held financially liable for failing to address it.

22. Additionally, in accordance with section 16 of the Act, when a landlord becomes liable to pay any amount as a result of a breach of subsection 20(1), the tenant has a duty to take reasonable steps to minimize the loss.
23. As the Tenants raised the section 82 issues at the hearing, the onus lies with them to establish that the Landlord breached his maintenance obligations. In order to prove the Landlord breached his maintenance obligations, the Tenants must provide enough details as to when the breach occurred, how many times and when they notified the Landlord of the problems. In review of all of the evidence before me, I am satisfied on balance of probabilities that the Landlord met his obligations under subsection 20(1) of the Act with respect to the alleged cockroach Infestation, broken stove coil, broken fire extinguisher, and insufficient heat and air condition. In making this finding, I considered the Tenants' evidence which was vague, lacked important details such as when the items broke, when they reported to the Landlord and when the repairs were completed. Based on Tenants' evidence, it was not possible for me to establish that the items required repair on an ongoing basis and that the Landlord did not respond in a timely manner to complete the repairs.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of July 14, 2022, the date the Tenant moved out of the rental unit
2. The Tenant shall pay to the Landlord \$7,515.88. This amount includes rent arrears owing up to the date the Tenant moved out of the rental unit and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
3. If the Tenant does not pay the Landlord the full amount owing on or before April 17, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 18, 2023 at 5.00% annually on the balance outstanding.

April 6, 2023

Date Issued

Percy Laryea

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.

*Note: When the LTB 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.

**Schedule 1
SUMMARY OF CALCULATIONS**

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

Rent Owing To Move Out Date	\$8,439.28
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	- \$1,100.00
Less the amount of the interest on the last month's rent deposit	- \$9.40
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$7,515.88