



Order under Section 69 Residential Tenancies Act, 2006

Citation: Lake Promenade Apartments Limited v Borre, 2023 ONLTB 28427

Date: 2023-03-31

File Number: LTB-L-028790-22

In the matter of: 105, 220 LAKE PROMENADE ETOBICOKE
ON M8W1A9

Between: Lake Promenade Apartments Limited Landlord

And

Nori Borre Tenant

Lake Promenade Apartments Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Nori Borre (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlord also claimed charges related to NSF cheques.

This application was heard by videoconference on January 27, 2023.

The Landlord's Legal Representative, Howard Levenson, and the Tenant attended the hearing. Dumitru Matei (D.M.) appeared as a witness for the Landlord.

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 \$1,775.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$58.36. This amount is calculated as follows: \$1,775.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to January 31, 2023 are \$15,975.00.
7. The Landlord is entitled to \$100.00 to reimburse the Landlord for administration charges and \$125.00 for bank fees the Landlord incurred as a result of 5 cheque given by or on behalf of the Tenant which was returned NSF.
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 \$1,775.00 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 \$39.76 is owing to the Tenant for the period from March 7, 2022 to January 27, 2023.

Section 82

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.

Tenant's evidence

12. At the hearing the Tenant raised the following issues pursuant to section 82 of the Act:
 - a) The unit was not clean when he moved in; and
 - b) The fumes exhausting from the laundry room vent were causing issues to the Tenant's health.
13. The Tenant testified when he moved into the rental unit, it had not been cleaned to his satisfaction. He stated he contacted the Landlord suggesting a deep cleaning was required and he would deduct the cost from his monthly rent. As the Landlord would not agree to this

arrangement, he did not proceed with the cleaning of the unit and it remained in the same condition.

14. The Tenant stated that after moving into the rental unit, he observed a large dryer vent below his window. It was the Tenant's opinion this vent emitted vapours that could potentially cause concerns with his health and therefore requested to be moved to a new unit in the building. He stated the Landlord agreed for him to move but advised that the rent concession he received at the commencement of his tenancy would not be offered and he would have to pay a \$300.00 transfer fee. The Tenant stated he refused the Landlord's offer to move to another rental unit.
15. The Tenant claimed his health was affected by the uncleanliness of the unit and by the fumes being emitted from the dryer vent. The Tenant offered no medical evidence to support his claim but did provide photographs of the unit and the dryer vent as evidence. These photographs showed construction dust above the kitchen cabinets and the location of the dryer vent below his unit's window.
16. The Tenant also submitted email correspondence between himself and the Landlord in which he requested an early termination of the tenancy as evidence. He stated the Landlord refused and advised he is responsible for the unit until the end of the term of the tenancy agreement.
17. In cross-examination the Tenant was asked if he contacted the City or Public Health about his concerns with the dryer vent to which he responded he did not. When asked if he had any medical evidence to support his claim, he affirmed he did not. When asked why he did not move out in accordance with the N4 Notice, the Tenant stated he wanted to wait for the matter to be heard.
18. The Tenant is seeking a 100 percent rent abatement for substantial interference with his reasonable enjoyment of the rental unit. He stated that he vacated the rental unit on November 6, 2022 but confirmed he has not notified the Landlord that he moved out as he was waiting for his concerns to be heard by the Board.

Landlord's evidence

19. D.M. has been employed with the Landlord for ten years as the property manager. He testified he received a complaint from the Tenant with regard to the rental unit not being cleaned sufficiently. He stated the Tenant was provided written notice that the unit would be cleaned on March 17, 2022 however the Tenant rescheduled the appointment to March 21, 2022. When D.M. arrived at the Tenant's unit on March 21, 2022, the Tenant refused to allow him to enter.

20. D.M. testified he was aware of the Tenant's concerns with the dryer ventilation system and although complaints from previous tenants were never received, the offer of moving to another unit was made to the Tenant. He stated the Tenant was shown two other units and accepted one but later refused to move after learning of the transfer fee and that there would be no rent concessions.
21. The Landlord's Legal Representative submitted the Tenant was afforded the opportunity to move to another unit but refused. He further submitted the Tenant sought to terminate the tenancy early and could have done so by way of the N4 Notice and vacated the rental unit.

Analysis

22. Based on the evidence adduced at the hearing and on a balance of probabilities, I am not satisfied the Landlord substantially interfered with the Tenant's reasonable enjoyment of the rental unit or residential complex. I say this because the Landlord's acted reasonably when addressing the Tenant's concerns with the cleanliness of his unit by scheduling two appointments to clean the unit to which the Tenant ultimately refused and by offering the Tenant a new unit to which again, he refused. As a result, the Tenant's section 82 issues are denied.
23. Section 16 of the Act states:

When a landlord or a tenant becomes liable to pay any amount as a result of a breach of a tenancy agreement, the person entitled to claim the amount has a duty to take reasonable steps to minimize the person's losses.

24. I further find that the Tenant had the opportunity to minimize his losses by ending his tenancy on or before May 20, 2022 in accordance with the N4 Notice. If he had done so, the arrears would not be as substantial, totalling over \$19,000.00. The Tenant stated he vacated the rental unit on November 6, 2022 but neglected to advise the Landlord causing further rent arrears to accrue.

Section 83 considerations

25. The Tenant states he vacated the rental unit on November 6, 2022 however he has provided no written notice to the Landlord and is still in possession of the rental unit. He is therefore responsible for the monthly rent until such time written notice is given. The Tenant did not provide any evidence regarding his personal circumstances that would prevent him from paying the outstanding rent arrears without which I am unable to determine if a payment plan should be granted.

26. The Landlord is seeking a standard voidable termination order in which the Tenant would be required to pay the outstanding rent arrears and filing fee within 11 days of the date of the order to avoid termination of the tenancy.
27. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$19,936.00 if the payment is made on or before March 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$21,711.00 if the payment is made on or before April 11, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after April 11, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
4. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before April 11, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$14,371.96. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application and unpaid NSF charges. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$58.36 per day for the use of the unit starting January 28, 2023 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlord the full amount owing on or before April 11, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 12, 2023 at 5.00% annually on the balance outstanding.

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. If the unit is not vacated on or before April 11, 2023, then starting April 12, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after April 12, 2023.

March 31, 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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on October 12, 2023 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.

*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

**Schedule 1
SUMMARY OF CALCULATIONS**

A. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before March 31, 2023

Rent Owing To March 31, 2023	\$19,525.00
Application Filing Fee	\$186.00
NSF Charges	\$225.00
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 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 the Tenant must pay to continue the tenancy	\$19,936.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before April 11, 2023

Rent Owing To April 30, 2023	\$21,300.00
Application Filing Fee	\$186.00
NSF Charges	\$225.00
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 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 the Tenant must pay to continue the tenancy	\$21,711.00

C. Amount the Tenant must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$15,775.72
Application Filing Fee	\$186.00
NSF Charges	\$225.00
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	- \$1,775.00
Less the amount of the interest on the last month's rent deposit	- \$39.76
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	\$14,371.96
Plus daily compensation owing for each day of occupation starting January 28, 2023	\$58.36 (per day)