



Order under Section 69
Residential Tenancies Act, 2006

Citation: MEDDCO PROPERTIES INC v Sopoco, 2023 ONLTB 28242
Date: 2023-03-31 File Number: LTB-L-075720-22 (SWL-55256-21)

In the matter of: 630 Dundas Street
London Ontario N5W2Y8

Between: MEDDCO PROPERTIES INC Landlord

And

Racel Sopoco Tenant

MEDDCO PROPERTIES INC (the 'Landlord') applied for an order to terminate the tenancy and evict Racel Sopoco (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 27, 2022. The Landlord's representative, Connie Sanford, 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 Tenant takes the position that as of December 31, 2019, her lawful monthly rent was reduced by 3.08% pursuant to a letter from the City of London. The Landlord argued that this reduced was already applied pursuant to subsection 4(b)(3) of the tenancy agreement.
4. The Tenant relies on a November 19, 2019 letter from the City of London that indicates that on December 31, 2019, the rent for the rental unit is reduced by 3.08% due to a decrease in the municipal property taxes. The letter advises tenants to discuss the calculation with the landlord before reducing the rent. The Tenant did not do this and instead began paying the reduced monthly amount.
5. The Tenant acknowledged that the following month she received a notice from the Landlord indicating that she had an outstanding balance because of her unilateral reduction of the rent. Accordingly, the Tenant was aware that the Landlord did not agree to the rent reduction notice.

Rather than apply to the Landlord and Tenant Board (LTB) by December 30, 2020, as advised in the letter, the Tenant continued paying the reduced monthly amount. I find this to be unreasonable.

6. Pursuant to section 136 of the Residential Tenancies Act, 2006 (the 'Act'), rent charged one or more years earlier shall be deemed to be lawful rent unless an application has been made within one year after the date that amount was first charged. The Tenant did not apply to the LTB challenging the validity of the rent charged. Accordingly, I find that the amount of rent charged by the Landlord to be lawful.
7. As of January 1, 2022, the lawful rent is \$778.93. It is due on the 1st day of each month. Given the passage of time since the hearing, it is likely the rent may have increased on January 1, 2023. The calculations in this Order are based on the evidence before me on October 27, 2022.
8. Based on the Monthly rent, the daily rent/compensation is \$25.61. This amount is calculated as follows: \$778.93 x 12, divided by 365 days.
9. As of the hearing date, the Tenant paid \$9,787.24 to the Landlord since the application was filed.
10. The rent arrears owing to March 31, 2023 \$4,702.51. This amount does not take into account any payments the Tenant has made since October 27, 2022.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. The Landlord collected a rent deposit of \$725.00 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.

Section 82 issues

13. The Tenant raised issues with flooding pursuant to section 82 of the Act. The Tenant testified that her rental unit flooding periodically between December 22, 2020 and November 2021.
14. The Divisional Court in *Toronto Community Housing Corp. v. Vlahovich*, [2010] O.J. No. 1463 (Vlahovich), confirms that a remedy cannot go back farther than the one-year period prior to the filing of the application. As the Act is silent on the limitation period for issues raised by a tenant under section 82, I find it reasonable to consider the disclosure date as the closest equivalent to a tenant's application filing date. The Tenant first disclosed the section 82 issues on March 14, 2022. Accordingly, the remedy period that can be considered in this case is from March 14, 2021 to November 2021.

15. Subsection 20(1) of the Act 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.

16. It is important to note that subsection 20(1) of the Act does not contain an element of fault. Therefore, the reasons for a landlord's breach are not relevant. In *Onyskiw v. CJM Property Management Ltd.* 2016 ONCA 477 (CanLII), however, the Court of Appeal rejected the idea that

any service interruption amounts to an automatic breach of the Act. Instead, the Court urged the Board to make a “contextual analysis” in each case, looking at all the facts before finding that a landlord breached the Act. As part of this analysis, the Court directed the Board to look at the essential nature of a tenant’s complaints and what steps, if any, were taken by the landlord.

17. 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 the case law in the area that basically states 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.
18. 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.
19. In determining whether the Landlord has breached their obligation to repair and maintain, the Board must first consider whether a maintenance or repair issue existed. The Board must then consider when the Landlord was informed of the issue or should reasonably have been aware of the issue and whether the steps the Landlord took in addressing the issue was reasonable in the circumstances.
20. Having considered the evidence of the parties, I am satisfied that while there was some flooding in the rental unit during the seven-month remedy period, the Landlord acted in a timely and reasonable manner to address the issue. Contractors and plumbers were sent to the rental unit in response to the Tenant’s complaints. The issue was rectified in October 2021 and the Tenant’s carpet was steam cleaned on two occasions. Accordingly, I am not satisfied the Landlord is in breach of subsection 20(1) of the Act.

Section 83

21. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of 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.
22. The Landlord did not wish to evict the Tenant and both parties seemed agreeable to resolving the issue. As of the hearing date, the Tenant owed \$993.86 in arrears and costs to October 31, 2022. Assuming the Tenant has continued paying 3.08% less each month, I find it reasonable to allow the Tenant to preserve the tenancy by paying the arrears owing within six months of this order.

It is ordered that:

1. The Landlord's application to terminate the tenancy and evict the Tenant is denied, subject to the following conditions.
2. The Tenant shall pay to the Landlord \$993.86 in arrears and costs owing to October 31, 2022 as follows:
 - a. For five consecutive months, starting April 2023 through to and including August 2023, the Tenant shall pay the Landlord \$165.64 on or before the 15th day of each month.
 - b. On or before September 15, 2023, the Tenant shall pay the Landlord \$165.66.
3. For the next six consecutive months, starting April 2023 through to and including September 2023, the Tenant shall pay the lawful monthly rent on or before the first day of each month.
4. No later October 31, 2023, the Tenant shall pay to the Landlord any additional arrears that became owing for the period from November 1, 2022 to March 31, 2023.
5. If the Tenant fails to make any one of the payments in accordance with paragraphs 2, 3 or 4 of this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenant to the Landlord shall become immediately due and owing and the Landlord may, without notice to the Tenant, and within 30 days of any breach of the order, apply to the Board pursuant to section 78 of the Residential Tenancies Act, 2006 for an order terminating the tenancy and evicting the Tenant and requiring that the Tenant pays any new arrears, NSF fees and related charges that became owing after October 27, 2022.

March 31, 2023

Date Issued

John Tzanis

Member, Landlord and Tenant Board

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