



**Order under Subsection 87(1)
Residential Tenancies Act, 2006**

Citation: 1470 Williamsport Holdings Inc. v Vucaj, 2023 ONLTB 27573

Date: 2023-03-31

File Number: LTB-L-008080-23

In the matter of: 207, 1470 Williamsport Drive
Mississauga ON L4X1T5

Betw een: 1470 Williamsport Holdings Inc. Landlord

And

Asdren Vucaj Tenant
1470 Williamsport Holdings Inc. (the 'Landlord') applied for an order requiring Asdren Vucaj (the 'Tenant') to pay the rent that the Tenant owes.

This application was heard by videoconference on March 16, 2023.

The Landlord's legal representative, Howard Levinson ('HL'), and the Tenant attended the hearing.

Preliminary Issue

1. The Tenant stated that if the application is not dismissed, then he wished to raise issues under section 82 of the Residential Tenancies Act, 2006 (the 'Act') with respect to allegations about pests in the rental unit. As I explained at the hearing, under section 82 of the Act and rule 19.4 of the Board's Rules of Procedure (the 'Rules'), in order to raise issues under section 82, at least seven days before the hearing a tenant must provide the landlord and the Board with (i) a written description of each issue the tenant intends to raise at the hearing, and (ii) a copy of all documentary evidence the tenant intends to rely upon at the hearing. Under section 82 of the Act and rule 19.4 of the Rules, if a tenant fails to provide a written description of each issue they intend to raise at the hearing, then the tenant shall not be permitted to raise the issue under section 82 of the Act, unless the Board is satisfied that the tenant could not comply with this requirement. This means that the tenant would have to satisfy the Board that there is a satisfactory reason why the tenant was not able to comply with the requirement.
2. The Tenant did not provide the Landlord or the Board with a written description of issues he intended to raise at the hearing, and did not provide any explanation as to why he was not able to comply with this requirement. On March 9, 2023, the Tenant sent an email to the Board containing photographs, but this was not served on the Landlord, and was not accompanied by any written

description of issues the Tenant intended to raise under section 82 of the Act. For these reasons, I declined to hear the Tenant's section 82 issues. As I explained at the hearing, this determination does not preclude the Tenant from

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pursuing a remedy with respect to these issues on a tenant application in accordance with the Act if he wishes, and he may wish to seek legal advice about this issue.

3. The Landlord's application was heard on its merits.

Determinations:

4. The Tenant vacated the rental unit on October 31, 2022. The parties agreed that the Tenant vacated the rental unit on this date. The Tenant was in possession of the rental unit on the date the application was filed.
5. The Tenant did not pay the total rent he was required to pay for the period from October 1, 2022 to November 14, 2022.
6. The lawful rent was \$1,660.00. It was due on the 1st day of each month.
7. The Tenant has not made any payments since the application was filed.
8. The Tenant is no longer in possession of the rental unit. The tenancy was not lawfully terminated in accordance with a notice of termination, Board order or an agreement to terminate the tenancy. For the following reasons, I find that the Tenant's obligation to pay rent ended on November 14, 2022.
9. The Tenant gave the Landlord a notice of termination of tenancy on September 26, 2022 indicating a termination date of October 31, 2022. This notice of termination was not valid because the fixed term of the tenancy expired on January 31, 2023. The Tenant was not entitled to give a notice of termination under section 47 of the Act with a termination date before the last day of the fixed term of the tenancy. The notice of termination also provided less than the 60 days' notice required by sections 44 and 47 of the Act. The Tenant stated that on September 26, 2022, he gave the notice of termination to an employee of the Landlord named "Matty". The Tenant stated he showed Matty photographs of bug bites on occupants of the rental unit, including an infant. The Tenant stated that "Matty" agreed that the Tenant should vacate the rental unit, and said that he did not think that this matter would be pursued by the Landlord. This exchange does not amount to an agreement to end the tenancy. Rather, "Matty" simply expressed that he did not think the Landlord would pursue the rent arrears that it would be legally entitled to. The Landlord did not give the Tenant any notice of termination of the tenancy.
10. I therefore find that the tenancy was not lawfully terminated, and I considered section 88 of the Act. Under this section, where a tenant vacates a rental unit without giving a notice of termination in accordance with the Act, and no agreement to terminate the tenancy has been made and the landlord has not given a notice to terminate the tenancy, then the amount of arrears owing are to be determined in accordance with the rules set out in that section. Pursuant to those rules, where the tenant vacated after giving a notice of termination that was not in accordance with the Act, rent

arrears are owing up to the earliest termination date that could have been specified in the notice if it had been given in accordance with the Act. In this case, the earliest termination date that could have been specified in accordance with the Act was January 31, 2023, being the last day of the fixed term of the tenancy. Rent arrears would therefore be owing up to January 31, 2023, however that is subject to the Landlord's obligation to minimize its losses under section 16 and subsection 88(4) of the Act.

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11. The Landlord rented the unit to a new tenant and the new tenancy commenced on November 15, 2022. The question before me is therefore whether rent arrears should be ordered for the period from November 1, 2022 to November 14, 2022. In determining this question, I considered the Landlord's efforts to minimize its losses, and particularly whether the Landlord made adequate efforts to rent the unit out as early as it could.
12. HL stated that the Landlord advertised the rental units in the building extensively with five different media outlets, although these were advertisements for the building generally and not the rental unit specifically. HL also stated that the Landlord had concerns about renting the rental unit to another person before the Tenant actually vacated because it did not know for sure the Tenant would vacate on October 31, 2022 until it actually happened. I am also cognizant of the fact that while the Tenant gave the invalid notice of termination of the tenancy on September 26, 2022, because that notice was not valid, the tenancy had not actually been terminated. I find that the Landlord did make adequate efforts to minimize its losses to November 14, 2022. This is based on the Landlord's evidence of its advertisements, and most importantly, the fact that a new tenancy for the rental unit commenced only 15 days after the Tenant vacated the rental unit.
13. The rent arrears and daily compensation owing to November 14, 2022 are \$2,424.12.
14. The Landlord collected a rent deposit of \$1,710.00 from the Tenant and this deposit is still being held by the Landlord. It was collected when the tenancy commenced on January 15, 2022, and no interest has been paid on the rent deposit. The rent deposit is applied to the arrears of rent because the tenancy is terminated.
15. Interest on the rent deposit, in the amount of \$28.52 is owing to the Tenant for the period from January 15, 2022 to March 16, 2023.
16. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.

It is ordered that:

1. The Tenant shall pay to the Landlord \$886.60. This amount includes rent arrears owing up to November 14, 2022 and the cost of the application minus the rent deposit and interest owing.
2. 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.

March 31, 2023

Date Issued

Mark Melchers

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.

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