



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

Citation: 2686250 ONTARIO STREET v GAMULIN, 2023 ONLTB 18304

Date: 2023-02-24

File Number: LTB-L-073870-22
(TSL-21180-21)

In the matter of: D-5, 1475 KING STREET WEST
TORONTO ON M6K1J4

Between: 2686250 ONTARIO STREET Landlord

And

EMINA GAMULIN Tenant

Your file has been moved to the Landlord and Tenant Board’s new case management system, the Tribunals Ontario Portal. Your new file number is LTB-L-073870-22.

2686250 ONTARIO STREET (the 'Landlord') applied for an order to terminate the tenancy and evict EMINA GAMULIN (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on April 12, 2022, July 5, 2022 and October 4, 2022. On October 4, 2022 the following parties attended the hearing: The Landlord’s agent, Hana Krischke, the Landlord’s legal representative, Bita Di Lisi, the Tenant, the Tenant’s legal representatives, Samuel Mason and Olivia Dooley (student at law).

The Tenant raised issues pursuant to section 82 of the *Residential Tenancies Act, 2006* (the 'Act') and the parties were directed to file closing submissions by no later than October 21, 2022. The Tenant’s filed their closing submissions on October 25, 2022. The Landlord did not file any closing submissions as directed.

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 \$1,063.84. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$34.98. This amount is calculated as follows: \$1,063.84 x 12, divided by 365 days.
5. The parties agreed that the total amount of arrears is \$20,076.05 for the period ending October 31, 2022.

Section 82 Issues

Bathroom Issues

6. I find that the Landlord breached their maintenance obligations with respect to the issue with the bathroom in the Tenant's rental unit. I am satisfied that the Tenant made the Landlord aware of an issue with the caulking in their bathtub drying out and requiring replacement and there were loose tiles in the tub and that the plaster on the wall in the bedroom had started to bubble and crack as of May 19, 2020. The Tenant submitted a maintenance request in writing to the Landlord and placed it in the box in the basement as they were required to do. The Tenant made further requests regarding the issues on June 21, 2020, August 1, 2020 and June 9, 2021. I am not satisfied that the Landlord responded to the Tenants maintenance request until the issue was addressed in the hearing on July 5, 2022. At first the Landlord denied receiving notice of the requests and then took the position that the Tenant was interfering with entry to the unit for contractors, but did not provide any specific dates this occurred. At the hearing on July 5th the Landlord confirmed that they would have the issue with the bathroom resolved by July 12, 2022.
7. Despite the Landlords undertaking for the repairs, the issue with the bathroom was still not fully completed by the October 4th hearing date. The Landlord indicated that there was a structural issue in the ceiling of the unit and that engineers became necessary to investigate the extent of the issue and that doing the bathroom repairs would be inappropriate on the basis that they needed to do extensive work instead to both the Tenants unit and the unit directly above.
8. So over the months of June through to the end of August the work commenced in the Tenants unit which put the Tenant without the use of her bathroom facilities for the months of July and August. The Landlord had originally told the Tenant that they would accommodate them in a hotel and then later reneged on their promise. Up to July 31, 2022 the Tenant was able to use another unit in the residential complex for bathing. However, the Tenant was not provided any alternative accommodations for August when they did not have access to bathroom facilities in their unit.
9. Not only did the Landlord breach their maintenance obligations with respect to the bathroom since 2020, in addition, the Landlord failed to comply with the interim order dated July 14, 2022 and had not fully completed the repair by October 4, 2022. On this basis, I find that the Tenant is entitled to an abatement of rent of 5% for the period of May 2020 when they first notified the Landlord and up to the end of May of 2022 for a total of \$1,276.56. I also find it appropriate to order an abatement of rent of 40% for the period of June 2022 through to the end of August 2022 as requested by the Tenant for an additional \$1,276.62. The total amount of abatement for the bathroom issue is therefore \$2,553.18.

Heat and Boiler Fire Issue

10. There was no dispute that the boiler caught fire on February 11, 2021 which put the entire building without heat for the weekend. Up to March 12, 2021 the Tenant then had intermittent heat in their unit and the radiator pipes in their unit were loud and caused them to have difficulty sleeping. On February 11th the Landlord offered the Tenant a portable space heater. In order for the Tenant to receive the heater, they were required to sign a release form which indicated that the Tenant would be charged \$100.00 if the heater was damaged or the Tenant misused the appliance.
11. Although it is not uncommon for a boiler to eventually fail due to its useful life expectancy, in the current case, I find that the Landlord was well aware of the maintenance deficiencies with the Boiler since at least 2019 when a property standards order had been issued regarding it. Furthermore, the investigation of the boiler fire resulted in a finding that the fire was caused due to the maintenance deficiency. The Landlord provided no evidence that regular maintenance was performed on the boiler or that there was any contingency plan in place regarding the boiler, despite that the Landlords knowledge of the property standards report. The Landlords evidence was that they would maintain the boiler once in the fall before they fired it up for the season.
12. On February 28, 2021 there was also no dispute that there was a carbon monoxide leak in the building which required the fire department to attend the property. I am not satisfied that the Landlord kept the Tenants informed of the issue regarding the leak or regarding the boiler fire and heat issue in general. It was the Tenant that continued to follow up with the Landlord and they received little to no updates regarding the state of the heat or whether they should be concerned about carbon monoxide leaking into their units. This caused the Tenant to be fearful for their safety, especially during the Covid pandemic.
13. I therefore find that the Landlord breached their maintenance obligations by failing to maintain the boiler in the residential complex which caused the Tenant to be without heat and then to experience intermittent issues with the heat. I also find that the Landlord substantially interfered with the reasonable enjoyment of the rental unit on this basis and also on the basis that the Landlord failed to provide the Tenant with updates and expectations for the issue with the heat, the pipe sounds and the carbon monoxide leak. I also find the Landlords demand to have the Tenants sign an agreement that they would reimburse the Landlord \$100.00 if the heater was damaged or not returned a substantial interference.
14. The Landlord had a positive duty to provide the Tenant with adequate heat without attempting to charge additional fees to the Tenant for their own faulty heat issue. Since the Landlord ought to have been aware of the imminent failure of the boiler and took no action to prevent it, I find that the Tenant is entitled to a 50% abatement for the period of February 11, 2021 to March 12, 2021 when the heat was finally restored in the amount of \$531.92. This abatement also encompasses the issue with the boiler fire and the carbon monoxide leak.

15. The Tenant requested a 100% abatement for this period, however, the Tenant still had the full use of their rental unit during the heat interruption and the Tenant did have intermittent heat.

Water shut offs

16. The Tenant testified that there were a total of 33 water shut offs between March of 2020 to July of 2022 when the matter was first heard. Some of the water shut offs were planned with notice and others were turned off on the basis of emergencies. The Tenant submitted copies of the water shut off notices provided by the Landlord where the water was shut off with at least some notice. There were 17 notices in total.
17. The Tenant testified that the water would be shut off all day long and that they had to ensure they had water during this time. There was a time when the water was shut off for 2 full days and overnight and the Landlord did nothing to provide the Tenant an explanation for the water shut off or any sort of accommodation regarding not having water for the two days. However, aside from the notice copies provided by the Tenant, the Tenant could not recall any other specific date that the water was off.
18. I do not find it unreasonable that the Landlord needs to shut the water off to the entire building on occasion as a result of the building being old and not having individual shut offs in each unit. The Landlord's evidence was that when a unit would become vacant, they would ensure there was a shut off valve put in the unit for future use. They have a plan in place to reduce the amount of water shut offs required for the entire building.
19. According to the Tenant's evidence, the water was shut off a total of 6 times between April 29, 2021 to May 19, 2021. Two of the notices indicate the water would be off for 2 consecutive days between the hours of 9:00am to 5:00pm. The Landlord failed to provide a reasonable explanation for the water being shut off for this period in time.
20. The Tenant requested \$100.00 in compensation for each of the 33 days that the water was shut off to their unit. However, I find that an abatement 50% per day for the 6 water shut offs between April 29th to May 18th appropriate under the circumstances for a total of \$104.94. Since the Tenant did not provide specific dates regarding the other shut offs outside of the notices, I am unable to determine that the water shut offs constitute substantial interference with the Tenant's reasonable enjoyment of the rental unit beyond the period between April 29, 2021 to May 18, 2021.
21. The Tenant is entitled to a total abatement of rent of \$3,190.04. This amount will be deducted from the amount owing to the Landlord.
22. The Landlord collected a rent deposit of \$850.00 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.
23. The Landlord has not paid the Tenant annual interest on the last month's rent deposit which they are required to do. Therefore, the Tenant is entitled to interest on their deposit in the amount of \$230.52 for the period of October 1, 2006 to October 4, 2022.

Section 83 considerations

24. I am not satisfied that the Landlord put any effort into negotiating a payment plan with the Tenant as they were required to do under subsection 83(6) of the Act. Aside from demanding rent payments from the Tenant, the Landlord did not respond to the Tenants request to work out a reasonable payment plan for the arrears.
25. The Landlord took the position that the Tenant had filed a joint request with other Tenants and that the Landlord told them they would not consider the request unless they were requested individually. However, the onus is on the Landlord to inquire with the Tenants regarding a payment plan.
26. The Tenant has lived in the rental unit since 2006. The Tenant was struggling with loss of employment prior to Covid and then her partner had been laid off work during Covid. The Tenant was unable to get unemployment benefits. As of the date of the April 12th hearing, the Tenant continued to have reduced income because she did freelance work. The Tenant is deeply connected to the neighbourhood and involved in the community. They also have a family member that is ill in the nearby hospital and she was the only designated visitor for that family. The Tenant indicated that she can afford the monthly rent and can pay additional amounts for the arrears of rent on an ongoing monthly basis.
27. As part of the interim order issued on April 20, 2022 the Tenant was required to pay their ongoing monthly rent to the Landlord and they did so up to the October 4, 2022 hearing, even despite the turbulence with not having an adequate bathroom facility in their unit for June through to the end of August 2022.
28. The Landlord filed their application on March 26, 2021 at a time when they had not yet even acknowledged the issues with the Tenants bathroom which had been outstanding for almost a year. Although I find the Landlord in breach, I do not find the bathroom issue a serious breach of the Landlords obligations. However, the Landlord also did not offer the Tenant a payment plan during Covid and in fact refused to speak to the Tenant regarding a payment plan other than inquiring as to when the Tenant would pay their arrears. In addition, the Landlord did not pay the annual interest on the last month's rent deposit since they collected it on October 1, 2006. The Landlord also failed to comply with the interim order dated July 14, 2022 to repair the issue with the bathroom as they had promised to do.
29. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and I find it appropriate under all the disclosed circumstances to deny the Landlords application for eviction pursuant to subsection 83(3)(a) of the Act.
30. However, considering the substantial arrears of rent, less the abatements and less the interest on the last month's rent deposit, the Tenant is still in arrears of rent in the amount of \$16,655.49 for the period ending October 31, 2022.
31. I find it appropriate to order that the Tenant pay the outstanding amount to the Landlord, however, I do not believe assigning an order under section 78 appropriate on the basis that I am denying the eviction pursuant to subsection 83(3)(a) of the Act.

32. The Tenant proposed to pay \$2,203.18 as a lump sum payment to the Landlord and an additional \$1,111.11 on top of the monthly rent each month until the arrears are paid in full. I find it appropriate to order the payment plan without section 78, but with a requirement that the full amount become due and owing with interest on default.
33. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs on the basis that the Tenant was in arrears of rent when the application was filed.

It is ordered that:

1. The Landlords application for eviction on the basis of non-payment of rent is denied.
2. The application is amended to an order for arrears of rent only.
3. The Tenant shall pay to the Landlord \$16,856.49. This amount includes rent arrears owing up to October 31, 2022 and the cost of filing the application. The interest the Landlord owes on the rent deposit and the rent abatement/rebate awarded to the Tenant are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
4. The Tenant shall pay to the Landlord the amount owing under paragraph 3 as follows:
 - a) \$2,203.18 on or by March 15, 2023;
 - b) \$1,111.11 on or by the first day of each month commencing on March 1, 2023 and continuing on the first day of each month up to and including to March 1, 2024; and
 - c) \$208.88 on or by April 1, 2024.
5. If the Tenant does not pay the Landlord the full amount owing on or by the dates ordered under paragraph 4 above, then the full amount outstanding will become due and owing and the Tenant will start to owe interest. This will be simple interest calculated from the date of default at 5.00% annually on the balance outstanding.

February 24, 2023

Date Issued

Terri van Huisstede
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.

**Schedule 1
SUMMARY OF CALCULATIONS**

A. Amount the Tenant must pay to the Landlord

Rent Owing To October 31, 2022	\$20,076.05
Application Filing Fee	\$201.00
NSF Charges	\$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}	- \$3,190.04
Less the amount of interest on the last month's rent deposit to October 4, 2022	- \$230.52
Total the Tenant must pay to the Landlord	\$16,856.49

2023 ONL TB 18304 (CanLI)