



Order under Section 69 Residential Tenancies Act, 2006

Citation: BenStar (No. 1) Limited Partnership v Xu, 2023 ONLTB 14866

Date: 2023-01-18

File Number: LTB-L-024937-22

In the matter of: B503, 220 IRA NEEDLES BLVD
KITCHENER ON N2N0C4

Between: BenStar (No. 1) Limited Partnership Landlord

And

Daniel Yang Tenants
Yuan Xu

BenStar (No. 1) Limited Partnership (the 'Landlord') applied for an order to terminate the tenancy and evict Daniel Yang and Yuan Xu (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on January 5, 2023. The Landlord's agent Ashley Chamberlain and legal representative Gail Kukor Lang and the Tenant Daniel Yang attended the hearing.

Determinations:

Agreed facts:

1. The parties agree that the tenancy will terminate on a non-remedial basis effective January 8, 2023.
2. The parties agree that as of the hearing date, the Tenants owe to the Landlord \$4,023.65. This amount includes arrears of rent and the costs of filing the application. The last months rent deposit and the interest the Landlord owes on the deposit are deducted from the amount owing by the Tenant.

Section 82:

3. At the hearing the Tenant raised concerns pursuant to section 82 of the *Residential Tenancies Act, 2006* (the Act) which 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.

4. The Tenant argues that he has been incorrectly charged the costs for heating the rental unit and as such, is entitled to reimbursement of \$529.75 for the costs of heating the rental unit from February 1, 2022 to December 1, 2022.
5. The residential complex is a 15-storey apartment building owned and managed by the Landlord.
6. The Tenant argues that the Landlord is responsible for the heating costs as stated in the lease agreement executed between the parties on September 27, 2021. The Tenant agrees that he is responsible for electricity payments as per the lease.
7. Ashley Chamberlain provided oral testimony at the hearing. Ms. Chamberlain is employed as a property manager for the Landlord. The Landlord's agent testified that the residential complex has a boiler system installed on the roof, which provides heat to a utility room in the residential complex. From the utility room heat is delivered to each rental unit via electricity. The Landlord also submitted into evidence a copy of the rental application which confirms that utility costs are not included with the monthly rent.
8. The Landlord takes the position that their obligation is to provide the residential complex with heating through the boiler system, to ensure that the heating system is in a good state of repair and that the costs of heating the individual units is the responsibility of the Tenants as this is done via electricity.
9. Section 202 of the Act states:
 - 202** (1) In making findings on an application, the Board shall ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants and in doing so,
 - (a) may disregard the outward form of a transaction or the separate corporate existence of participants; and
 - (b) may have regard to the pattern of activities relating to the residential complex or the rental unit.
10. Therefore, in accordance with section 202 of the Act, I must go beyond the mere consideration of the terms of the lease and examine the overall substance of the dispute at hand.
11. The residential complex is a multi-residential dwelling. It is also clear that the Tenants are responsible for the payment of electricity and that each individual rental unit is heated via electricity. As such, I would agree with the Landlord that the costs of heating the individual rental units are the responsibility of the Tenants and that the Landlord's responsibility is to ensure that the main source of heating is provided to the residential complex as a whole.
12. Therefore, I find that the Tenant has not been illegally charged the costs of heating their rental unit and as such, the Tenant's section 82 claims are dismissed, and no abatement of rent is awarded.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before January 8, 2023.
2. The Tenant shall pay to the Landlord \$4,023.65. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenant.
3. The Tenant shall also pay the Landlord compensation of \$76.65 per day for the use of the unit starting January 6, 2023 until the date the Tenant moves out of the unit.
4. If the Tenant does not pay the Landlord the full amount owing on or before January 29, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 30, 2023 at 5.00% annually on the balance outstanding.
5. If the unit is not vacated on or before January 8, 2023, then starting January 9, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. 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 January 9, 2023.

January 18, 2023

Date Issued

Fabio Quattrociocchi
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 July 9, 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.