



Order under Section 30, 31, and 69 Residential Tenancies Act, 2006

Citation: Al Harazi v Patil, 2023 ONLTB 15185

Date: 2023-01-16

File Number: LTB-L-001032-22
LTB-T-002709-22

In the matter of: 1212, 4460 TUCANA CRT
MISSISSAUGA ON L5R3K9

Between: Shiraz Al Harazi Landlord

And

Harsh Patil,
Kavita Patil Tenants

LTB-L-001032-22:

Shiraz Al Harazi (the 'Landlord') applied for an order to terminate the tenancy and evict Harsh Patil and Kavita Patil (the 'Tenants') because the Tenant did not pay the rent that the Tenants owe.

LTB-T-002709-22:

The Tenants applied for an order determining that the Landlord failed to meet the Landlord's maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards.

The applications were heard by videoconference on July 29, 2022. The Landlord, their support, F. Al Harazi, and their legal representative, V. Aivalli attended the hearing.

Determinations:

1. This order deals with two applications, LTB-L-001032-22 (L1) and LTB-T-002709-22 (T6). It was evident that the applications were centralized around the similar issues, and consisted of the same parties, with similar evidence being relied on in each application. Given the circumstances and adopting the most expeditious process I heard the applications jointly.

L1 APPLICATION:

2. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants 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.

3. As of the hearing date, the Tenants were still in possession of the rental unit.
4. The lawful rent is \$2,000.00. It is due on the 1st day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$65.75. This amount is calculated as follows: \$2,000.00 x 12, divided by 365 days.
6. The Tenants have not made any payments since the application was filed.
7. The parties agree that the rent arrears owing to July 31, 2022, are \$18,000.00.
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 \$2,154.00 from the Tenants 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 \$19.19 is owing to the Tenants for the period from November 1, 2021 to July 29, 2022.

RELIEF FROM EVICTION

11. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
12. At the hearing the Tenants testified that they want to stay in the unit and have been withholding the rent as a result of their maintenance issues. The Tenants submitted that they have the funds readily available for the Landlord. As such I see no reason to delay or deny payment to the Landlord.
13. However, my analysis does not end here because of the wording of Section 83(3) of the Act. which states in part:
 - (3) Without restricting the generality of subsection (1), the Board shall refuse to grant the application where satisfied that ...
 - (a) the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement;
14. After hearing the submissions of the parties and reviewing the evidence provided, I am satisfied that this is not a "serious breach" within the meaning of s. 83(a) and decline to deny eviction on this basis.

T6 APPLICATION:

15. As explained below, the Tenants have proven on a balance of probabilities some of the allegations contained in their application.
16. The Tenants' application is centralized around 3 issues:
- a) No hot water in the second bathroom shower;
 - b) An issue with the 'main' bathroom toilet flushing; and
 - c) Two holes in the drywall that need repairing
17. I find that the Landlord failed to meet the Landlord's obligations under subsection 20(1) of the Act to repair the rental unit. The Landlord has not completed repairs to the unit in a timely manner and did not act reasonably to the Tenants maintenance concerns.
18. In *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477, the Court of Appeal held that the LTB should take a contextual approach and consider the entirety of the factual situation in determining whether there was a breach of the landlord's maintenance obligations, including whether the landlord responded to the maintenance issue reasonably in the circumstances. The court rejected the submission that a landlord is automatically in breach of its maintenance obligation as soon as an interruption in service occurs.

Hot Water in the Second Bathroom Shower

19. The Tenants submitted that they notified the Landlord in November of 2020 regarding the issue, and at the time of the hearing the issue was still ongoing. The issue began after the condominium building started plumbing work. The building had removed old plumbing and replaced with newer pipes, after this there was no hot water supplied to the shower.
20. As a result of this, the Tenants could not use the shower in the main bathroom unless they wanted a very cold shower. However, there was another bathroom in the rental unit where there was a fully functional shower. The male Tenant submitted that although there was another bathroom within the unit, sometimes he would need to use the common building facilities to shower from time to time.
21. The Landlord submitted that he was aware of the issue and that the cause of the delay was that the condominium building was having difficulties with respect to the supply of the parts needed to complete the work. However, the Landlord believes that this issue is specific to this unit as it was not brought up at the condominium's annual general meeting.
22. At the hearing the Landlord relied on an email dated July 20, 2022, from the property manager that outlined the following:
- "The **main bathroom** is scheduled for **October 2022** as it is much more complex repair than the master, and ask that residents help by making the accommodation to use the one bathroom for now or they can use the facilities in the building."

23. The evidence provided by the Landlord on this issue is very limited. The Landlord did not call the property manager as a witness who could testify about the contents of the email, or the reason(s) for the delay in addressing this issue.
24. I accept that part of the delay was caused by circumstances beyond the Landlord's control, however the delay in this case is exceptional. The Landlord became aware of the issue in November 2020 and was still ongoing as of the date of the hearing on July 29, 2022.
25. The Landlord is not excused from the obligations to perform the repairs because they are handled by a third party. The Landlord's lack of diligence with respect to this issue is concerning. The Landlord failed to provide sufficient evidence to explain the substantial delay or that they acted reasonably in the circumstances. Therefore, an abatement shall issue.
26. An abatement is a contractual remedy designed to address the idea that rent is paid for a bundle of goods and services, and where a tenant is not receiving all of the goods and services being paid for, rent should be abated proportional to the difference between what is being paid for and what is being received.
27. The Tenants request in their application a 40% rent abatement for the disrepair issues from the date the issue arose in November 2020 to date.
28. The Tenant filed their application on January 26, 2022, due to the limitations set out in the Act, I can only issue a rent abatement from the period of January 26, 2021, to the date of the hearing. I do not find that the Tenants are entitled to a 40% rent abatement. I say this because the Tenants were never fully without the use of a shower or hot water, the shower was a mere inconvenience and so I find that a 12% rent abatement to be fair in the circumstances.
29. As already mentioned, the Tenants monthly rent is \$2,000.00. 12% of \$2,000.00 is \$240.00x18 months= \$4,320.00. This amount shall be deducted from the arrears as an offset.
30. The Tenants shall also be permitted to deduct \$240.00, from the monthly rent until this issue is remedied by the Landlord.

Toilet Issue

31. The Tenants testified that the toilet in the main bathroom had an issue with respect to it not flushing properly. They described that the issue seems to be with the toilet bowl not filling adequately with enough water to flush properly. The Tenants were not without a toilet as there was another fully functioning one in another bathroom located in the rental unit.
32. The parties acknowledged that the toilets were changed in the rental unit in December 2020. The Landlord submits that they were never notified of this issue after the toilet was replaced, and therefore had no knowledge that this issue was on going.

33. The Landlord submitted that they were in the unit for an inspection to deal with another disrepair issue on August 21, 2021, and the Tenants did not notify them of the issue at that time.
34. During the hearing the Tenants relied on communications to the Landlord with respect to the toilet issue prior to December 2020. The Tenants did not supply any evidence to support that they made a follow-up complaint regarding this issue after the replacement of the toilets were completed.
35. Based on the evidence before me, I cannot conclude that the Landlord was properly notified of this issue, and this is not a case where the Landlord ought to have known about the issue. Therefore, I decline to award an abatement with respect to this issue. However, the Landlord was provided with notice at the hearing that the toilet was still an ongoing issue and so they should act accordingly in rectifying the problem.

Issues with Drywall

36. The parties agree that there are 2 holes in the drywall within the rental unit. One is in the closet of the master bathroom and the second is located under the sink in the master bathroom- but is secluded in the bathroom cabinet.
37. Both parties acknowledge that these holes are purely cosmetic and do not preclude the Tenants from properly using the closet or the cabinet. The Landlord submitted that he was waiting for a contractor from the condominium corporation to fix the holes but would be going in within a week from the hearing to temporarily fix the two holes. Given that there was very minimal, if any impact on the Tenant- no order for an abatement shall issue. However, I will order that the Landlord repair the two holes in the drywall.

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:**
 - \$25,866.00 if the payment is made on or before January 27, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Landlord shall pay to the Tenants \$4,320.00, as an abatement for the period of January 26, 2021, to July 2022. This amount has already been credited to the Tenants in this order. See schedule 1.
4. If the Landlord has not already fixed this issue, the Tenants shall be authorized to deduct \$240.00 from the monthly rent starting August 1, 2022, until the issue is resolved.
5. By February 29, 2023, the Landlord shall ensure that the Tenants have fully functional toilets and shall have the 2 holes in the drywall repaired.

6. If the Landlord does not complete the repairs by February 29, 2023, the Tenants are authorized to deduct \$100.00 from the rent beginning March 1, 2023, until the repairs are complete.
7. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after January 27, 2023, but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
8. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before January 27, 2023**
9. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$11,599.56. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit, interest the Landlord owes on the rent deposit, and the abatement awarded to the Tenants are deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
10. The Tenants shall also pay the Landlord compensation of \$65.75 per day for the use of the unit starting July 30, 2022, until the date the Tenant moves out of the unit.
11. If the Tenants do not pay the Landlord the full amount owing on or before January 27, 2023, the Tenants will start to owe interest. This will be simple interest calculated from January 28, 2023, at 5.00% annually on the balance outstanding.
12. The Landlord or the Tenants shall pay to the other any sum of money that is owed as a result of this order.
13. If the unit is not vacated on or before January 27, 2023, then starting January 28, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
14. 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 28, 2023.

January 16, 2023

Date Issued

Curtis Begg

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 28, 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 Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before January 27, 2023

Rent Owing To January 31, 2023	\$30,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$4,320.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$25,866.00

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

Rent Owing To Hearing Date	\$17,906.75
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$2,154.00
Less the amount of the interest on the last month's rent deposit	- \$19.19
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$4,320.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total amount owing to the Landlord	\$11,599.56
Plus daily compensation owing for each day of occupation starting July 30, 2022	\$65.75 (per day)