



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

**Citation:** Kinmond v Davis, 2023 ONLTB 13955

**Date:** 2023-01-10

**File Number:** LTB-L-072091-22  
TEL-20480-21

**In the matter of:** Upper - Unit "B", 338 Dufferin Avenue  
Trenton Ontario K8V5G7

**Between:** Brian Kinmond Landlord

**And**

Brenda Davis Tenant

Brian Kinmond (the 'Landlord') applied for an order to terminate the tenancy and evict Brenda Davis (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on December 21, 2022 at 1:00 pm.

The Landlord Representative Sarah Teal, the Landlord and the Tenant attended the hearing

**Determinations:**

1. The rental unit was the upper floor unit of a duplex which had a shared driveway and backyard.
2. 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.
3. The Tenant was in possession of the rental unit on the date the application was filed.
4. The Tenant vacated the rental unit on September 14, 2022. Rent arrears are calculated up to the date the Tenant vacated the unit
5. The lawful rent is \$1,442.10. It was due on the 1st day of each month.
6. The Tenant has paid \$7,159.00 to the Landlord since the application was filed.
7. The rent arrears owing to September 14, 2022 are \$22,058.20.
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 \$1,425.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.
10. Interest on the rent deposit, in the amount of \$59.63 is owing to the Tenant for the period from May 15, 2019 to September 14, 2022.

Section 82 issues

11. The Tenant believes an abatement of rent is owed due to several Tenant rights issues they disclosed prior to the hearing pursuant to section 82 of *The Residential Tenancies Act, 2006* (the "Act").
12. Initially the Landlord Representative objected, stating they were not provided with any disclosure. However, upon reviewing the file I found email correspondence between the Tenant, the Board and the Landlord Representative in which the Tenant provided disclosure pursuant to s.82(2) of the Act. Therefore, the Tenant was permitted to raise the s.82 issues.
13. Specifically, Tenant alleged the Landlord harassed, obstructed, coerced, threatened or interfered with the Tenant and substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of the Tenant's household in that they:
  - a. Harassed the Tenant with the serving of notices in bad faith and intimidating their son;
  - b. Failed to accommodate the Tenant and the Tenants son's disability by addressing issues with the ventilation system; and
  - c. Illegally entered the rental unit.
14. The Tenant gave the following testimony:
  - a. Following a failed attempt to illegally increase the rent in December 2019, the Landlord began serving her with several notices in bad faith. Specifically, it began with a N13 notice of termination for work that was never completed then a N12 notice of termination for own use which was withdrawn and then reserved. The Landlord's subsequent application was dismissed by the Board and the Tenant was required to pay back the compensation she was given. There were other notices for not completing yard work or snow removal that she was never compensated for although she requested an abatement. The Tenant believes that snow removal was not her responsibility but that of the Landlord;
  - b. Shortly after moving in she noticed the ventilation wasn't working properly. She and her son both suffer from respiratory issues, which she informed the Landlord of in writing in February 2020. At the time she also provided the Landlord with letters from medical staff attesting to the issues. She repeatedly informed the Landlord via email given the threat that COVID posed to her son and the necessity for proper ventilation. In the summer of 2021, the Landlord's wife responded to one of her

emails by stating it was not their responsibility for her not having a normal family and if they had known of the issues they wouldn't have rented to them. The Tenant entered into evidence an email sent to the Landlord dated June 09, 2021 in which she requested the vents be cleaned citing the potential for overheating and effect on her and her son's condition;

- c. The respiratory issues were exasperated by the Landlord failing to address issues with the ventilation and instructing her to not open the windows in her rental unit. There was a smell emanating from the vents that was best described as dead animal and she also saw signs of mice in the rental unit in the forms of nests and droppings. The smell was so bad it caused her and her son to vomit. The Landlord response was to provide her with rat poison;
- d. The Landlord failed to properly address the leak from with the tub or issues with the washer and dryer. The leak dripped down below her unit on to an electrical panel that posed a safety issue and as a result she didn't feel safe using the tub. The Landlords' response was to applying caulking around the tub and he never addressed the issue regarding the washer and dryer;
- e. On or about November 04, 2019 the Landlord came unannounced to the rental unit to deliver a notice to her. At the time she wasn't home and her son answered. The Landlord proceeded to threaten and intimidate her son demanding to know where she was and tell him that she hadn't been paying her rent. He prevented her son from closing the door by putting his boot in the jam. This left her son traumatized. When she learned of the event, she immediately texted the Landlord advising him of the obligation to give 24 hours notice before any visit. This was supported by an email entered into evidence; and
- f. There were several instances of workers coming on to the property unannounced and not wearing masks in accordance with the regulations at the time.

15. The remedies sought by the Tenant are as follows:

- a. November 2019 -70% rent abatement;
- b. May 2019 to February 2020 -100% rent abatement; and
- c. December 2020 -50% rent abatement.

16. On cross-examination the Tenant gave the following testimony:

- a. On or about May 25, 2021, the Landlord Representative responded to complaints regarding the alleged mice infestation and requested that she provide some pictures in support of their complaint. The Tenant couldn't remember exactly when they sent pictures;
- b. From the time they moved in until September 2021, the issues regarding the ventilation and lack of circulation persisted and had adverse affect on her and her

- children. She didn't take any steps to mitigate because the Landlord sent her messages not to open the windows because it would interfere with the ventilation;
- c. Due to electrical and appliance issues, workers were coming in and out and doing assessments but wouldn't fix the issues until much later;
  - d. They received one N12 notice of termination and then one N13 notice of termination over a period of 5 months;
  - e. They first saw signs of mice infestation in early 2020, but couldn't give an exact number of nests seen or mice sightings;
  - f. Their allegations regarding the Landlord's failure to accommodate were solely based on the alleged issues surrounding the ventilation; and
  - g. They didn't submit any substantive evidence such as pictures, correspondence or videos in support of their allegation that the Landlord told them to not open the window, the disparaging comments made by the Landlord's wife, or that they completed the yard work and snow removal and were therefore owed compensation.

17. The Landlord gave the following testimony:

- a. On or about November 04, 2019 they attended the rental unit to serve a notice during which time they interacted with the Tenant's son and use his foot to hold open the door while he talked to him. The extent of the conversation was asking if the Tenant was there and to give her the notice when she returned;
- b. Regarding the Tenant's allegations about the ventilation, they initially responded by having contractors inspect the ventilation system who found it to be in good working order. However, due the Tenants consistent complaints they eventually had the entire ventilation system cleaned on September 26, 2021, approximately 3 months after receiving the first complaint. Receipts for ventilation inspection and cleaning were entered into evidence;
- c. Regarding the tub and leaking pipe, they did initially replace the caulking around the Tenants tub, but it wasn't until they were informed of a leak from the ceiling in the unit below that they determined the issue was a rusted pipe. They had the pipe fixed within a week of discovering the extent of the issue. Receipts for the plumbing work completed were entered into evidence;
- d. The washer and dryer were inspected on multiple occasions, and it was determined that they were in working order, but the Tenant was overloading them. He informed the Tenant of this, but the complaints persisted which led him to replacing them entirely. Receipts for inspections and the new washer Dryer were entered into evidence;
- e. The initial lease did have the Tenant responsible for lawn maintenance and snow removal but that changed once he separated the residential complex from his

corporation and commenced a new tenancy agreement as a sole proprietor. As a result, he arranged for contractors to attend the residential complex for snow removal and lawn work but given they only attended to the common areas he didn't believe notice was required; and

- f. He did receive complaints about mice from the Tenant and the tenant living in the lower unit, the Tenant's sister. At the time he was on vacation out of the city and couldn't recall if he delivered the rat poison or authorized the Tenant to purchase it. To his recollection the issue was resolved.

### *Analysis*

18. Having given consideration to the testimony and evidence presented, for the reasons that follow I find that the Tenant has not established on the balance of probabilities that the Landlord breached the Act or that a remedy is warranted in the circumstances.
19. Section 23 of the Act states that a landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant.
20. The validity N12s and N13 notices has already been considered by the Board and determined to have been served in bad faith. The issue I must decide is whether the service of these two notices and the Landlord's interaction with the Tenant's son on November 04, 2019 constituted harassment or intimidation.
21. I am not satisfied that the Tenant has proven the service of the notices of termination constitute harassment. The Ontario Human Rights Code defines harassment as "engaging in a course of vexatious [annoying or provoking] comment or conduct which is known or ought reasonably to be known to be unwelcome." While I accept that the notices were unwelcome from the Tenants perspective, the Tenant has not established that they were vexatious, or that the Landlord ought to know they were unwelcome and not merely exercising his rights under the Act.
22. Regarding the Landlord's interaction with the Tenants son, the only evidence offered by the Tenant was one-sided email conversation in which the Tenant accused the Landlord of intimidation. The Tenant's son was not called to testify. The Landlord offered direct testimony that contradicted the Tenants allegations. Specifically, he describes the encounter as both brief and professional in which he merely inquired as to the location of the Tenant and asked that the Tenant's son provide her with the notice he delivered. Accordingly, the testimony of the Landlord is entitled to greater weight as the only other party present to the interaction. I accept as accurate the Landlord's account of the exchange on November 04, 2019 and find that his conduct did not rise to the level of harassment, obstruction, coercion or interference with the Tenant.
23. Section 20(1) of the Act states that 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.
24. While raised as an issue respecting the duty to accommodate, the ventilation issues really concern an alleged failure by the Landlord to ensure that vents were properly maintained.

The Tenant's testimony on this issue was both inconsistent and lacking any supporting evidence. The only evidence submitted was again a one-sided email conversation in which she notified the Landlord of her concerns over a year after she allegedly first informed him in writing. In contrast, the Landlord testified and provided receipts to prove that after receiving the initial complaints he investigated the issue and determined the ventilation was in working order and then after further complaints took reasonable additional steps, namely having the vents professionally cleaned. All of this occurred within three months of receiving the first complaint and during COVID. Accordingly, I am satisfied that the Landlord fulfilled his maintenance obligations under s.20(1), and also provided reasonable accommodation to the Tenant for any medical issues related to the condition of the vents.

25. Regarding the issue of mice, the Tenant failed to provide any evidence to support the claim of an ongoing issue that was not adequately addressed by the Landlord. The Landlord Representative and the Landlord both admitted that they were aware of the issue and made inquiries of the Tenant to help address the issue. Once aware the Landlord provided rat poison, following which there were no further complaints. As such I am satisfied the Landlord fulfilled his maintenance obligations with respect to this issue.
26. Finally, regarding the allegations of illegal entry, the Tenant only alleged that workers accessed the common areas of the property without notice, not her rental unit. As such, I am not satisfied on the balance of probabilities that there were illegal entries as the Landlord was under no obligation to provide notice for entries to common areas.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated as of September 14, 2022, the date the Tenant moved out of the rental unit
2. The Tenant shall pay to the Landlord \$13,600.57. This amount includes rent arrears owing up to the date the Tenant moved out of the rental unit. The rent deposit and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
3. If the Tenant does not pay the Landlord the full amount owing on or before January 21, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 22, 2023 at 5.00% annually on the balance outstanding.
4. If the Landlord does not pay the Tenant the full amount owing on or before January 21, 2023, the Landlord will start to owe interest. This will be simple interest calculated from January 22, 2023 at 5.00% annually on the balance outstanding.

**January 10, 2023**  
**Date Issued**

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Kelly Delaney  
Member, Landlord and Tenant Board

15 Grosvenor St, 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.