



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

Citation: Adekusibe v Savard, 2022 ONLTB 14267

Date: 2022-12-12

File Number: LTB-L-008865-22

In the matter of: 1510 KENNEDY ST
SUDBURY ON P3A2G2

Between: Adefolami Adekusibe Landlord

And

Jennifer Walsh and Joseph Serge Savard Tenant

Adefolami Adekusibe (the 'Landlord') applied for an order to terminate the tenancy and evict Jennifer Walsh(SW) and Joseph Serge Savard(JSS) (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on August 17, 2022.

The Landlord, the Landlord's agent Ellen Adekusibe, and the Tenant attended the hearing

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. The Tenant was in possession of the rental unit on the date the application was filed.
3. The Tenant vacated the rental unit on April 30, 2022. Rent arrears are calculated up to the date the Tenant vacated the unit.
4. The lawful rent is \$2,500.00. It was due on the 1st day of each month.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to April 30, 2022 are \$11,250.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$2,500.00 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.
9. Interest on the rent deposit, in the amount of \$4.85 is owing to the Tenant for the period from March 3, 2022 to April 30, 2022.

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Maintenance Issues:

Tenant's Evidence

10. JSS and SW testified that they agreed with the amount of rent arrears calculated by the Landlord. JSS and SW testified they did not pay the rent because the Landlord refused to address the sewage clog issues in the unit. JSS and SW testified that in December 2021, a basement flood resulted from a broken pipe in the bathroom that clogged the sewage system. JSS and SW informed the Landlord of this problem on the same day. JSS and SW testified that they could not use the shower in the basement or any water-related utilities due to the clogged sewage.
11. JSS and SW claimed that the technician informed him that the cause of the sewage clog was the weak plumbing system and that it was most likely that the clog would happen again. JSS and SW asserted that the clogging was not due to wipes and female products because Mrs. Walsh had not used these products since her surgery eight years ago.

Landlord's Evidence

12. The Landlord submitted into evidence copies of the invoices for the plumbing repairs to the sewage system completed by Reliance Home Comfort. The invoices show that the Landlord hired the Technicians to service the sewage system on Friday, December 24, 2021, at 3:28 pm, Saturday, December 25, 2021, at 11:18 am, Monday, December 27, 2021, at 11:53 am, and Thursday, December 30, 2021, at 12:24 pm. The service report confirmed that wipes and female products caused the clogged sewage.

Analysis

13. Section 20(1) of the Act states: 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.
14. In *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477, the Court of Appeal held that it is necessary to take a contextual approach to determining whether a landlord has breached its maintenance obligations under section 20(1) of the Act and a landlord will not be found liable for such a breach if the landlord responded to the maintenance issue reasonably in the circumstances. In *Onyskiw*, the Court of Appeal also specifically considered the landlord's mitigating efforts as part of its contextual analysis.
15. In this case, the evidence establishes that the Landlord took reasonable steps to address the issues. The evidence show that the Landlord address the sewage issues whenever she was informed by the Landlord. In review of all of the evidence before me, I am satisfied on balance of probabilities that the Landlord met his obligations under subsection 20(1) of the Act with respect to the alleged clogged sewage system. JSS and SW's evidence did not establish that the sewage required repair on an ongoing basis and that the Landlord did not respond in a timely manner to complete the repairs.
16. JSS and SW's withholding of rent has no legal justification, and they asserted no financial need, and no need for time to pay the arrears.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of April 30, 2022, the date the Tenant moved out of the rental unit
2. The Tenant shall pay to the Landlord \$8,931.15. This amount includes rent arrears owing up to the date the Tenant moved out of the rental unit and the cost of filing the application. 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 December 23, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 24, 2022 at 2.00% annually on the balance outstanding.

December 12, 2022

Date Issued

Percy Laryea

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.

*Note: When the LTB 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 Tenant must pay as the tenancy is terminated

Rent Owing To Move Out Date	\$11,250.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$2,500.00
Less the amount of the interest on the last month's rent deposit	- \$4.85
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$8,931.15