



Order under Section 69 Residential Tenancies Act, 2006

Citation: Dong v You, 2022 ONLTB 13158

Date: 2022-11-30

File Number: LTB-L-019596-22

In the matter of: 15, 653 VILLAGE PARKWAY
Markham ON L3R2R2

Between: Saihua Dong Landlord

And

Jun You Tenant

Saihua Dong (the 'Landlord') applied for an order to terminate the tenancy and evict Jun You (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 24, 2022. The Landlord, Landlord's legal representative E. Shi 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. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$2,000.00. It is due on the 3rd day of each month.
4. 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.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to November 2, 2022 are \$30,840.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.

Section 82 Issues raised by Tenant at the hearing

9. The Tenant filed a notice of issues the Tenant intends to raise at the hearing pursuant to Section 82 of the *Residential Tenancies Act, 2006* (the 'Act').

The Tenant's Testimony

10. The Tenant raised maintenance and harassment issues.
11. The harassment allegations were related to alleged incidents between the Tenant and the Landlord in 2016. Subsection 29(2) of the *Residential Tenancies Act, 2006* ('The Act') provides that an application made under subsection (1) may not be made more than one year after the day the alleged conduct giving rise to the application occurred.
12. Because the alleged incidents took place more than 6 years, ago, the Board does not have jurisdiction to consider those issues. Accordingly, the Tenant's allegations regarding harassment are dismissed.
13. The Tenant testified that she paid for duct cleaning just before she moved into the unit in August 2016. She then requested the Landlord to conduct a further duct cleaning two months later, which the Landlord obliged.
14. The Tenant testified that despite the two duct cleanings and changing the filters every 3 months, there remains dirt coming through the ducts. The Tenant alleges that the ducts are "contaminated", but provided no evidence of the type of contamination she believes exists, nor did she submit any expert evidence to corroborate these assertions.
15. The Tenant submitted many photos of what appears to be the inside of air ducts which look typical of a home with forced air ducts.
16. The Tenant testified that she blocks all of the air duct vents with paper towel.
17. She testified that she requested the Landlord to clean the ducts again in 2018, but that the Landlord refused her request on this occasion. She seeks a 15% rent abatement for the duct issue from October 2016.
18. The Tenant also testified that there are cracked tiles on the shower wall in one of the full (4-piece) bathrooms on the second level of the rental unit. She testified that there is also an issue with peeling paint near the ceiling and that she advised the Landlord of this issue around October 3, 2016.
19. The Tenant later clarified that there are no actual cracked tiles, but cracked grout between the tiles. No photos or evidence was provided to support this claim.
20. The Tenant provided extreme close-up photos which she asserts were images of the peeling paint in the second full bathroom. It was not possible to discern what the photos were depicting.
21. The Tenant testified that she is unable to use the second full washroom at all because of the issues raised and she therefore seeks a 15% rent abatement for the paint and cracked grout, from October 3, 2016.
22. When further queried, the Tenant admitted that the toilet and sink in the subject bathroom are fully functional and in use. She also has another full-piece bath including a shower in her master bathroom, as well as a third, 2-piece bathroom on the lower level. There are 2 occupants in the rental unit, being the Tenant and her teenaged son.

The Landlord's Testimony

23. The Landlord testified that she had no knowledge of any issues raised by the Tenant until the hearing notice and review of the disclosure on or around October 16, 2022.
24. The Landlord testified that she did agree to clean the ducts for the Tenant just after she moved in, in 2016 and arranged for service by a professional duct cleaning company. She considered that issue to be resolved, having received no other complaint or request from the Tenant about the matter since.
25. The Landlord testified that she had never been contacted by the Tenant regarding cracked or broken tiles but that she did, at the beginning of the tenancy see a very minute piece of paint peeling in the second washroom. She testified that she did not feel that this was an issue of any concern and she has never been requested by the Tenant to rectify the issue.
26. The Landlord testified that she feels the Tenant may be causing damage to the unit by admittedly blocking all of the vents in the house and thereby obstructing natural air flow, which is the very purpose of a forced air HVAC system.

S.82 Analysis

27. Based on the evidence before the Board, I am not satisfied that the Tenant has proved that the Landlord is in breach of the Landlord's obligations to maintain the unit. Therefore, the Tenant's section 82 claims are dismissed.
28. Subsection 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.
29. 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.
30. In this case, the evidence does not establish the existence of the alleged maintenance issues. There was no proof of the issues with the tile and the photos presented alleging peeling paint were not identifiable as peeling paint, or of any maintenance concern. In addition, there was no evidence adduced to corroborate the Tenant's claims regarding air contamination.
31. I also find that the Landlord was not aware of the Tenant's allegations of an ongoing issue with dirty/contaminated ducts or cracked grout prior to the Tenant's s.82 disclosure. While the Landlord admitted that she saw a miniscule piece of peeling paint in the subject bathroom, I don't find that there was sufficient evidence adduced to support the claim for peeling paint.

Relief from eviction

32. 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. There have been no payments made since mid 2021. The Tenant gave varying reasons for the arrears, from having zero income, to having issues with spousal support which she previously relied upon to pay her rent. The Tenant later testified that she has been working in the food delivery service industry, but in spite of this, the Tenant has made no effort to pay rent to the Landlord. As the Tenant has little to no income, I find that this tenancy is not sustainable.
33. The Landlord has been prejudiced by the substantial arrears, which are now approaching the Board's monetary jurisdiction. To delay the termination would cause the Landlord to be further financially prejudiced.
34. On a balance, I do not find that there are sufficient grounds to delay termination of the Tenancy.

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:**
 - \$33,026.00 if the payment is made on or before December 2, 2022. See Schedule 1 for the calculation of the amount owing.

OR

 - \$35,026.00 if the payment is made on or before December 11, 2022. See Schedule 1 for the calculation of the amount owing.
3. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after December 11, 2022 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
4. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before December 11, 2022**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$30,472.50. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.

6. The Tenant shall also pay the Landlord compensation of \$65.75 per day for the use of the unit starting October 25, 2022 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlord the full amount owing on or before December 11, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 12, 2022 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 11, 2022, then starting December 12, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. 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 December 12, 2022.

November 30, 2022
Date Issued

Donna Adams
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 June 12, 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.

**Schedule 1
SUMMARY OF CALCULATIONS**

A. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before December 2, 2022

Rent Owing To December 2, 2022	\$32,840.00
Application Filing Fee	\$186.00
Total the Tenant must pay to continue the tenancy	\$33,026.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before December 11, 2022

Rent Owing To January 2, 2023	\$34,840.00
Application Filing Fee	\$186.00
Total the Tenant must pay to continue the tenancy	\$35,026.00

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

Rent Owing To Hearing Date	\$30,286.50
Application Filing Fee	\$186.00
Total amount owing to the Landlord	\$30,472.50
Plus daily compensation owing for each day of occupation starting October 25, 2022	\$65.75 (per day)