



Order under Section 69 Residential Tenancies Act, 2006

Citation: Sikder v Bedard, 2022 ONLTB 11580

Date: 2022-11-29

File Number: LTB-L-002774-21

In the matter of: 800 LAFLECHE RD
HAWKESBURY ON K6A1N5

Between: Ali Hossain Sikder Landlord

And

Jean Leon Bedard Tenant

Ali Hossain Sikder (the 'Landlord') applied for an order to terminate the tenancy and evict Jean Leon Bedard (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on November 3, 2022.

The Landlords Legal Representative, James Moak, the Landlord assisted by his daughter Saida Sikder, the Tenant assisted by his niece Penny 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 \$1,300.00. It is due on the first day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$42.74. This amount is calculated as follows: \$1,300.00 x 12, divided by 365 days.
5. The Tenant has paid \$5,200.00 to the Landlord since the application was filed. The Tenant produced a rent receipt showing that on December 31, 2021 a payment of \$2,600.00 had been received by the Landlord to pay December 2021 and January 2022 rent.
6. The Landlord's update did not include the December payment. Therefore, an amount of \$1,300.00 was added to total payments reflected in the L1/L9 information update
7. The Landlord claimed rent arrears owing from December 2021 until the period ending November 30, 2022 minus any payments made. This amounts to 12 months X \$1,300.00 - \$5,200.00 = \$10, 400.00
8. There is no last month's rent deposit.

9. The Tenant raised issues pursuant to s.82 of the *Residential Tenancies Act, 2006*, (the 'Act'). These were disclosed to the Landlord prior to the hearing on June 15, 2022. Specifically, the issues are:
 - a. Absence of smoke detectors,
 - b. The exterior stair rail is loose and wobbly,
 - c. Large hole in the foundation in the basement that causes flooding, and
 - d. Existence of fissures in the flooring that leads to an infestation of insects.
10. It was uncontested that:
 - a. That the Tenant had replaced the smoke detectors in May 2022, and that he was seeking reimbursement of those costs totalling \$159.00.
 - b. The exterior stair rail has been loose and wobbly since March 2022.
 - c. There is flooding in the basement due to the hole in the floor that is unresolved since April 2022.
 - d. There is an ongoing insect infestation of centipedes and water bugs that is unresolved since February 2022.
 - e. The flooding has also created mould in the rental unit that remains unresolved.
11. The Landlord submitted that railing issues forms part of a Landlord's L2 application for damages on basis that the Tenant has been doing some repairs.
12. The Tenant testified that as a result of these issues, he cannot do laundry in his own home, that he relies on his niece for assistance. He further testified that the Landlord has been attempting to come around after 6:30 p.m., in the evenings to do work, but that it is too noisy and an inconvenience to sit around waiting on the Landlord.
13. The Landlord did not respond to these issues.
14. The Tenant was seeking a rental abatement for all of the issues until such time as they are resolved.
15. In considering the maintenance issues raised by the Tenant I have taken guidance from Board Interpretation Guideline 5, *Breach of Maintenance Obligations*. This Guideline provides an overview of the Board's usual interpretation of the law regarding a landlord's obligation under section 20 of the Act. As noted therein, landlords are required to rectify maintenance deficiencies and meet applicable standards within a reasonable time-frame.
16. I am satisfied on a balance of probabilities that the Landlord has breached a Landlord's obligations under section 20 of the Act. The issues were not disputed by the Landlord, in that he chose not to respond to any of them. On this basis the only conclusion is that the

Landlord is well aware of the maintenance defects and has chosen not to take any action to repair them.

17. The Tenant testified that he is disabled, does not own a car. His only expenses are for rent, hydro and gas, along with his living expenses. The arrears began after the Landlord refused direct deposit and refused payments. The Tenant proposed that he could afford to pay in total \$2,000.00 per month, towards monthly rent and arrears.
18. The Landlord did testify to dispute the payment issues raised and indicated that he would agree to direct deposit payments.
19. I am satisfied that a rent abatement in the amount of 20% or rent inclusive of all issues since February 2022 is warranted in all the circumstances. The Landlord's failure to take any action to remedy these issues, particularly where the Tenant is disabled justifies this amount. This shall continue until the Landlord completes all repairs. An order for the Landlord to pay the Tenant (10 X \$260.00) \$2,600.00 shall issue. The Tenant may also deduct 20% or rent on a monthly basis until such time as the repairs are completed.
20. If all of the repairs are not complete by March 31, 2023 the Tenant will be entitled to an increased rent abatement totalling 25% of rent until all repairs are complete.
21. I am satisfied that the Tenant is also entitled to reimbursement of \$159.00 for purchasing the smoke detectors.
22. The total arrears owing to the Landlord is: \$10,400.00 - \$2,600.00 - \$159.00 = \$7,641.00.
23. In light of the issues raised by the Tenant and the lack of a response to them by the Landlord, it would be unfair to evict the Tenant. Therefore, a payment plan shall be ordered.
24. The Tenant submitted that due to his disability any payment plan should not be subject to a section 78 of the Act provision. The Tenant has an obligation to pay rent and to make payments in full and on time, and that the Landlord should be able to rely on those payments or failing which to seek eviction. I am declining the request to not make the payment plan subject to a section 78 of the Act provision.
25. I have considered that this is a relatively even decision on part of the Landlord and the Tenant, such that I am declining to order costs to the Landlord.
26. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

It is ordered that:

1. The Tenant shall pay to the Landlord \$7,641.00.00 which represents the amount of rent owing outstanding for the period ending November 30, 2022, minus a rent abatement and refund of expenses.

2. The Landlord shall work with the Tenant to assist in setting up a direct deposit payment arrangement. This includes ensuring any adjustments to the direct deposit once the arrears are paid in full. In the alternative the Landlord shall arrange to meet the Tenant at the rental unit to collect the rent when it comes due. This is directed as an accommodation to the Tenant for his disability. Any delays on the part of the Landlord shall not be deemed to be a late payment by the Tenant.
3. The Tenant is entitled to deduct a 20% rent abatement from monthly rent for the period December 1, 2022 until March 31, 2023.
4. If the Landlord fails to complete all repairs including mould remediation, the rent abatement shall increase to 25% of rent commencing April 1, 2023 and shall continue until all maintenance issued are resolved.
5. The Landlord’s application for eviction of the Tenant is denied on the condition that:
 - (a) The Tenants shall make the following payments to the Landlord in respect of the monies owing under paragraph 1 of this order:

Date Payment Due	Amount of Payment
December 2022 rent on or before December 10, 2022	\$2,000.00 (\$1300 - (20%) \$260.00 = \$1040.00 rent and \$960.00 arrears)
On or before January 1, 2023 until March 31, 2023	\$2,000.00 (\$1300 - (20%) \$260.00 = \$1040.00 rent and \$960.00 arrears)
On or before April 1, 2023, until the arrears are fully paid (estimate 5 months and a final payment in month 6 for \$301.00) (sooner if the higher rent abatement applies)	\$2,000.00 (\$1300.00 rent, and \$700.00 arrears subject to any further abatement ordered above)

- (b) The Tenants shall also pay the Landlord the rent for the months of January 2023 to October 2023 in full, and no later than the 1th day of each corresponding month, or until the arrears are paid in full, whichever occurs first.

7. If the Tenants fails to make any of the payments in accordance with paragraph 3, and by the dates required, then:
- (a) The Landlord may apply under section 78 of the Act for an order terminating the tenancy and evicting the Tenants, and for the payment of any new arrears of rent and NSF charges not already ordered under paragraph 1 of this order. The Landlord must make the application within 30 days of a breach of a condition set out in paragraph 3 of this order.
 - (b) The balance owing under paragraph 1 of this order shall become payable on the day following the date of default. The monies owing shall bear interest at the post-judgment interest rate determined under subsection 207(7) of the Act.

November 29, 2022
Date Issued

Robert Patchett
Vice Chair, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.