



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

Citation: Puri v Mapara, 2022 ONLTB 12116

Date: 2022-11-21

File Number: LTB-L-018302-22

In the matter of: 8 TEMPLEHILL RD BRAMPTON
ON L6R0W2

Between: Amritpal Mann, Landlords
Jaspreet Mann

And

Farah Nasirali Mapara Tenant

Amritpal Mann, Jaspreet Mann (the 'Landlords') applied for an order to terminate the tenancy and evict Farah Nasirali Mapara (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 21, 2022.

The Landlord J. Mann (JM) and the Tenant attended the hearing. The Landlords' Legal Representative S. Puri and Tenant's Legal Representative D.Samuels were also present.

Determinations:

Preliminary matter: Lawful Monthly Rent

1. The Tenant's Legal Representative stated that her lawful rent is \$1,650.00 and \$200.00 is for utilities. The rent claimed by the Landlord is inaccurate and the application should be dismissed.
2. The Tenant's Legal Representative stated that the Landlord JM has acknowledged in a text message that the rent is \$1,650.00 for Canadian Trillium Benefit form that the Tenant was filing out. JM has also sent another message acknowledging that the 2020 rent has been accounted for when the Tenant inquired about pending rent in 2021. The rent that the Tenant paid in 2020 totalled \$19,800 which is 12 x \$1,650.00. She further added that since the Landlord had accepted rent at \$1,650.00 in 2020 for a period of 12 months that should be the lawful rent now as per s.136(1) of the Act.
3. The Landlords' Legal Representative submitted that the Landlord had provided that the text message stating that the rent is \$1,650.00 only to help the Tenant and it is being quoted out of context. The lease clearly states that the lawful rent is \$1,850.00 all inclusive but does not state that there will be a refund to the Tenant if the utilities fall below the designated \$200.00 amount. The Tenant though is liable for any amounts in excess of the \$200.00 in utility bills.

4. The ledger the Tenant's Legal Representative provided to the Board does indicate rent payments totalling \$19,800.00 but it does not account for the CMHA payment made directly to the Landlord in the amount of \$1,500.00 on September 17, 2022. There is another \$2,000.00 reflected in the Landlords' ledger which was not spoken about at the hearing.
5. I find that the lawful monthly rent is \$1850.00, as agreed to by the parties in the lease. There is no evidence of a meeting of the minds to reduce the rent from \$1,850.00 in 2019 to \$1,650.00 in 2020. The \$200.00 monthly charge for utilities meets the definition of "rent" contained in s.2(1) of the *Residential Tenancies Act, 2006* ("Act") because it is a fixed amount the Tenant is required to pay to the Landlord in exchange for a service the Landlord provides the Tenant in respect of the occupancy of the rental unit. Hence the Landlords' application shall proceed on merits.

L1 Application: Arrears owing

6. The Landlords 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.
7. As of the hearing date, the Tenant was still in possession of the rental unit.
8. The lawful rent is \$1,850.00. It is due on the 1st day of each month.
9. Based on the Monthly rent, the daily rent/compensation is \$60.82. This amount is calculated as follows: \$1,850.00 x 12, divided by 365 days.
10. The Tenant has paid \$12,500.00 to the Landlords since the application was filed.
11. The rent arrears owing to October 31, 2022 are \$6,550.00.
12. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
13. There is no last month's rent deposit.

Section 82 issues

14. The Tenant raised the following issues at the hearing:
 - a) Master Bedroom window needs replacement;
 - b) Leak in the fridge;
 - c) Leak in living room from master washroom bathtub;
 - d) Garage door does not work.
15. As explained below, the Tenant shall be granted a total rent abatement for three out of the four issues in the amount of \$1,510.00. This amount shall be applied to the rent arrears owing by the Tenant.

Master Bedroom window needs replacement

16. The Tenant testified that she moved into this single-family home in December of 2016. In or around February or March of 2017 when she opened the master bedroom window for the first time, it came off the hinge and does not seal properly. She reported it to the Landlord JM the same day and since then the window has not been fixed. She has been communicating with JM every year since 2017 during the start of every winter.
17. The window carries a draft of cold air into the master bedroom, making it impossible for her to sleep there or use the master bedroom fully in the cold winter months. She has to share a bedroom with her son in the winters because the window has not been fixed yet and JM claims it is very expensive to fix the window as the whole frame needs to be replaced. The Tenant also also finds it to be a health and safety issue due to young children in the house.
18. JM testified that the Tenant did inform her of the window, but the Tenant also took it upon herself to fix it because a friend of her is in construction. JM testified that she told the Tenant that she will reimburse her for any costs incurred. The Tenant has never complained about health and safety concerns until the hearing. JM also testified that she and the Tenant share a close bond and that the Tenant has the direct numbers for all the handymen that the Landlords use regularly and calls them directly whenever she wants to get something fixed. JM did agree that the \$10,000.00 quote that she got was very steep and she had wanted the Tenant to try to repair it with the help of her friend first.
19. Pursuant to s.20(1) of the Act, the Landlord has an obligation to complete all necessary repairs in a timely manner. A landlord cannot transfer this obligation to a tenant. In this case I find that the Landlords have breached their repair obligation with respect to the window. JM was informed by the Tenant about the issue on or around March 1, 2017 and has not taken any concrete steps to fix or replace the window.
20. The Landlords must pay the Tenant rent abatement for the loss of use of the master bedroom for the winter months. Pursuant to s.29(2) of the Act and the Divisional Court decision in *Toronto Community Housing Corporation v. Allan Vlahovich*, 2010 ONSC 1686, the remedy granted can only go back one year from the date of the filing of the s.82 issues on October 20, 2022. The rent abatement is calculated at \$1,110.00 as follows:
- | | |
|---|--------------------------|
| Winter of 2021- 2022 | 10% x 6 months X \$1,850 |
| (November 1, 2021 till
April 30, 2022) | = \$1,110.00 |
21. The Landlords must also repair or replace the window of the master bedroom on or before December 15, 2022. If the Landlord fails to repair the window by December 15, 2022, the Tenant may continue to deduct 10% of their rent in the amount of \$185.00 each month thereafter until the window repair have been completed, starting from December 16, 2022.

Leak in the fridge

22. The Tenant testified that the fridge has a leak inside and she has to place a clear jug inside to collect the water. If she does not place the jug the water overflows and accumulates in the fridge causing mildew to grow.

23. The Landlord JM was informed of the fridge leak a few months after the Tenant moved in around March 2017. The Landlords sent a handyman to fix the issue, but it has not been resolved yet. The Tenant testified that she last spoke to JM about it in 2020 as communication has been hard since then.
24. JM testified that the Tenant has her handyman's direct number and has always directed him to come and check any issue around the house without seeking the Landlords' approval and the Landlords have never objected to any of it. The Tenant has not communicated any issues to her, and her understanding is that the fridge issue has been resolved. JM added that other appliances like the dishwasher and even the air conditioner that have had disrepair issues in the past, have been fixed promptly, by her repair person when the Tenant calls him directly then why would the fridge still be not fixed.
25. The Landlord stated that the Tenant has failed to communicate the issue to her and has had opportunities to get them fixed at no cost to her so the Landlord should not be held responsible for the disrepair.
26. While the Landlords' handyman may have had direct contact with the Tenant to resolve maintenance issues, but it does not absolve the Landlords of their responsibilities under the Act to maintain the rental unit. The Landlords must have direct communication with the Tenant and their agents to get feedback about issues and their resolution. S. 20 of the Act explicitly states that it is a landlord's responsibility to provide and maintain the rental unit in a good state of repair and fit for habitation and to comply with health, safety, housing and maintenance standards. The Act does not transfer the rights and responsibilities to the Landlords' Agent(s). The Tenant had informed the Landlord about the issue and the Landlord failed to follow up to see if the issue was resolved.
27. With respect to the appropriate remedy, I find that the Tenant has experienced a minor inconvenience by keeping the jug in the fridge and emptying it out once every week. There was also no evidence of any grocery items being spoiled due to the leak if the Tenant stops the drip with the jug. Hence, I am granting a lumpsum rent abatement of \$200.00 for the inconvenience caused by the leak in the fridge.
28. The Landlords will also get the fridge repaired on or before December 15, 2022. If the Landlords fail to repair the window by December 15, 2022, the Tenant may continue to deduct \$15.00 each month thereafter from her rent until the fridge leak has been fixed.

Leak in living room from master bathtub

29. The Tenant testified that in the earlier months of her tenancy around March 2017, when she used the master bathroom tub, she noticed some water drops on her couch in the living room directly below the bathroom. She even saw some drops of water from the ceiling. She notified JM about the same, but nothing has been done till date.
30. The Tenant also testified that she has not used the bathtub since 2017. The Tenant has no evidence of the same. A picture of a dried-up leak on the corner of a wall was submitted.
31. JM testified that she does not remember the issue being reported to her and she cannot go back and check her older conversations as JM lost all her old data from her phone which could not be retrieved. The Tenant has never spoken about it again till the date of the

hearing. The Landlord again reiterated that the Tenant has the numbers for the handymen, and they would have fixed it, if it was an issue.

32. I find that this was a single incident reported from 2017 and the Tenant has not used the bathtub since then. Therefore, I am not convinced that there is an ongoing issue. Also, if the issue was not communicated to the Landlords or their agents, then the Landlords are not liable for any failure to repair.
33. Hence this claim of the Tenant is dismissed.

Garage door does not work

34. The Tenant testified that the garage door of the house, has a loose hinge which requires extra efforts by the Tenant to close the door fully. The Tenant informed JM in December 2016. The garage door is still not fixed. The Tenant would prefer to use the garage door to bring in her groceries and other items directly into the house, but she has had to use the front door instead. She also said that the garage door was better in the summers.
35. JM again stated that this was not reported or else her handyman would have fixed it by now. JM testified that the Landlords do not often see the bills that the handymen charge them as they are trusting people and they are willing to spend money on maintenance issues when reported by the Tenant. This issue was not reported, otherwise it would have been fixed as well like all other maintenance issues reported by the Tenant. The Tenant has never spent any money out of pocket for the same.
36. I find that the Landlords have again passed on their responsibilities to their agents and has not followed up with the Tenant to see if the issue reported has been resolved. Pursuant to S.20, the Landlords have failed to repair or replace the garage door in a reasonable time frame.
37. With regard to the appropriate remedy, since the Tenant does not park a car in the garage the issue with garage door causes her a minor inconvenience of either walking to the main door with groceries or using some force to close the garage door. This minor inconvenience can be compensated with a lumpsum abatement of \$200.00.
38. The Landlords shall also get the garage door repaired on or before December 15, 2022. If the Landlord fails to repair the window by December 15, 2022, the Tenant may continue to deduct \$15.00 each month thereafter until the garage door repair has been completed.

Section 83 considerations

39. 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. The Landlord has been very flexible with the Tenant with rent payments made by the Tenant till date. However, it would not be unfair to give the Tenant extra time to pay off her rental arrears. I shall grant the Tenant time till December 31, 2022 to pay off the rent arrears.

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:**
 - \$7,076.00 if the payment is made on or before December 31, 2022. See Schedule 1 for the calculation of the amount owing.

OR

- \$8,926.00 if the payment is made on or before December 31, 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 31, 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 31, 2022**
 5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$5,122.22. 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 \$60.82 per day for the use of the unit starting October 22, 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 31, 2022, the Tenant will start to owe interest. This will be simple interest calculated from January 1, 2023 at 4.00% annually on the balance outstanding.
 8. If the unit is not vacated on or before December 31, 2022, then starting January 1, 2023, 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 January 1, 2023.
 10. The Landlords shall also repair or replace the following items in the rental unit on or before December 15, 2022:
 - the window in the master bedroom
 - the leak in the fridge
 - the garage door.
 11. If the Landlords do not fully comply with paragraph 10 the Tenant may deduct \$215.00 from the rent that becomes due on January 1, 2022 and each month thereafter until all of the repairs have been completed.

November 21, 2022

Date Issued



Sheena Brar

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 1, 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.

2022 ONLTB 12116 (CanLII)

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 November 30, 2022

Rent Owing To November 30, 2022	\$20,900.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$12,500.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$1,510.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$7,076.00

A. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before December 31, 2022

Rent Owing To December 31, 2022	\$22,750.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$12,500.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$1,510.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$8,926.00

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

Rent Owing To Hearing Date	\$18,477.22
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$12,000.00
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	- \$0.00
Less the amount of the interest on the last month's rent deposit	- \$0.00
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$1,510.00

Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$5,122.22
Plus daily compensation owing for each day of occupation starting October 22, 2022	\$60.82 (per day)