



Order under Section 69 Residential Tenancies Act, 2006

Citation: Marling v Lawrence, 2022 ONLTB 9637

Date: 2022-10-25

File Number: LTB-L-007893-22

In the matter of: Back Apartment, 9 JAMES ST E
COBOURG ON K9A1G8

Between: Brian Marling Landlord

And

Robert Lawrence, Terri Lawrence Tenants

Brian Marling (the 'Landlord') applied for an order to terminate the tenancy and evict Robert Lawrence and Terri Lawrence (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

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

The Landlord, Landlord's legal representative C. Aylwin and the Tenants Robert Lawrence attended the hearing.

Determinations:

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants 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 Tenants were still in possession of the rental unit.
3. The lawful rent is \$1,400.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$46.03. This amount is calculated as follows: \$1,400.00 x 12, divided by 365 days.
5. The Tenants have paid \$2,800.00 to the Landlord since the application was filed.
6. The rent arrears owing to August 31, 2022 are \$9,800.00.
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 \$1,400.00 from the Tenants and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
9. Interest on the rent deposit, in the amount of \$21.86 is owing to the Tenants for the period from April 30, 2020 to August 17, 2022.

Section 82 Issues raised by Tenant at the hearing

10. The Tenants 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

11. The Tenants alleged that the Landlord deliberately interfered with vital services to the unit, namely hot water and electricity for several days in January 2022. The Tenants also alleged illegal entry on October 15, 2021. There was no specific remedy sought by the Tenants for the issues raised.
12. The Tenant Robert Lawrence testified that the unit frequently experiences power outages. He testified that the hot water in the unit was cut off for 10 days from January 15-25, 2022 and that the power was off on January 20, 2022. Tenant later testified under cross examination that he or his wife notify the Landlord anytime a utility or service stops working. He went downstairs to the Landlord's business to notify him personally of the lack of hot water. He stated that he did not know when it was fixed but that he noticed he had hot water 10 days later. The Tenant also testified that it was only a light bulb in the stairwell of their entrance that was not working for one day on January 20, 2022 and not the entire unit lacking electricity.
13. The Tenant testified to an alleged illegal entry of the unit on October 15, 2021, that he was not present for. The Tenant testified that his wife was too ill to attend the hearing but that she had advised him that the Landlord entered the unit early in the morning of October 15, 2021 without notice and came into her bedroom where she was in bed, and the Landlord yelled at her. The Tenant testified that friends of his were also staying in the unit at the time and that the Landlord screamed and swore at them to leave the unit. The Tenant testified that his wife asked the Landlord to leave the unit and that the entire interaction was less than 5 minutes.

The Landlord's Testimony

14. The Landlord testified that the unit has experienced frequent breaker "tripping" since the Tenants occupied the unit. He operates his business in a commercial unit directly below the Tenant's unit. The Landlord does not use hot water in the commercial unit, so he is not alerted to issues unless the Tenants advise the Landlord. He testified that whenever the breaker has tripped, the Tenants have advised the Landlord, he goes to the electrical panel and flips the breaker back on and the service resumes immediately. The Landlord denied that the Tenants were without hot water or electricity for any length of time and if they did, it was due to their failure to report the issue to the Landlord in a timely manner. The Landlord further testified that he had not received communications from the Tenants since November 2021.
15. The Landlord testified that he spoke directly to the Tenant Robert Lawrence on October 14, 2021 on the back porch of the unit and requested access to the unit to conduct the monthly smoke detector check. The two men agreed that the Landlord would attend the following

morning as agreed by the Tenant. The Landlord testified that the Tenant responded with “no problem”. The Landlord testified that he attended the rental unit the next morning, noted guests arriving to the unit just ahead of him. When he attended, he testified that he knocked on the door to the unit, heard someone say “come in” from inside and he entered the unit. He testified that he encountered the same two individuals he’d seen entering the Tenant’s unit, in the living room smoking and possibly engaging in drug activity. The Landlord testified that he told the individuals that their activity is not allowed in the unit and that they needed to leave. The Landlord denied entering the unit yelling and screaming. The Landlord testified that he heard Terri Lawrence from her bedroom, where the door was open. He referred to her demeanor as “freaking out” whilst asking him what he was doing there. The Landlord testified that he advised the Tenant that her husband had authorized his attendance at the unit. He left the unit when asked to do so.

S.82 Analysis

16. Section 21 of the Act states that a landlord shall not withhold the reasonable supply of any vital service or deliberately interfere with the reasonable supply of any vital service. The Act defines a vital service as including hot or cold water and electricity.
17. Section 22 of the Act provides that a landlord shall not substantially interfere with the reasonable enjoyment of the rental unit for all usual purposes by a tenant.
18. Section 23 of the Act specifies that a landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant.
19. Section 26 of the Act specifies that a landlord may enter a rental unit at any time without written notice in the case of emergency or if the tenant consents to the entry at the time of entry.
20. I am not satisfied that the Landlord interfered with the Tenants’ reasonable enjoyment of the unit, withheld vital services or entered the unit illegally.
21. I do not find that the Landlord deliberately withheld vital services. While there may have been a brief interruption of services due to a maintenance issue with the breaker panel, I accept the Landlord’s testimony that he always attends to those issues immediately.
22. I do not find that the Landlord entered the unit illegally, as he obtained consent prior to entry in accordance with section 26(1)(b) of the Act. The Tenant Robert Lawrence agreed to grant entry to the Landlord on the morning of October 15, 2021. When the Landlord attended as agreed and knocked on the door, he was invited to come in. The Tenant was not present for the entry, and no evidence was led by parties who were actually present, therefore I accept the Landlord’s account of what happened.
23. Therefore, the Tenants’ section 82 issues are dismissed.

Relief from eviction

24. 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 Tenants receive ODSP which includes a shelter allowance that the Tenants have failed to pay to the Landlord. The Tenant testified that his wife is scheduled for surgery but provided no medical evidence to support this assertion.
25. The Landlord holds a mortgage on the property and has suffered financial distress from the arrears of rent and also covid related impacts on their business.
26. 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 Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$12,786.00 if the payment is made on or before October 31, 2022. See Schedule 1 for the calculation of the amount owing.

OR

 - \$14,186.00 if the payment is made on or before November 5, 2022. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after November 5, 2022 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
4. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before November 5, 2022**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$7,946.65. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$46.03 per day for the use of the unit starting August 18, 2022 until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before November 5, 2022, the Tenants will start to owe interest. This will be simple interest calculated from November 6, 2022 at 4.00% annually on the balance outstanding.

8. If the unit is not vacated on or before November 5, 2022, then starting November 6, 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 November 6, 2022.

October 25, 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 May 6, 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 Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before October 31, 2022

Rent Owing To October 31, 2022	\$15,400.00
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$2,800.00
Total the Tenants must pay to continue the tenancy	\$12,786.00

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before November 5, 2022

Rent Owing To November 30, 2022	\$16,800.00
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$2,800.00
Total the Tenants must pay to continue the tenancy	\$14,186.00

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

Rent Owing To Hearing Date	\$11,982.51
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$2,800.00
Less the amount of the last month's rent deposit	- \$1,400.00
Less the amount of the interest on the last month's rent deposit	- \$21.86
Total amount owing to the Landlord	\$7,946.65
Plus daily compensation owing for each day of occupation starting August 18, 2022	\$46.03 (per day)

