



Order under Section 69 Residential Tenancies Act, 2006

Citation: Sydorow v Mcleod, 2024 ONLTB 40307

Date: **2024-06-11**

File Number: LTB-L-020053-24

In the matter of: Unit 1, (Upper), 68 STEDFORD CRES
BRAMPTON ON L7A4P5

Between: Brian Sydorow
Aleksandra Sydorow

and

Dawn Mcleod
Paul Dhillon

I hereby certify this is a
true copy of an Order dated
Jun 11, 2024

Landlord and Tenant Board

Landlords

Tenants

This amended order is issued to correct a clerical error in the original order. The corrections have been bolded and underlined for ease of reference.

Brian Sydorow and Aleksandra Sydorow (the 'Landlords') applied for an order to terminate the tenancy and evict Dawn Mcleod and Paul Dhillon (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on May 8, 2024 and May 24, 2024.

The Landlords' Legal Representative, Lisa Barder, and the Tenants attended the hearing.

Determinations:

Preliminary Issues

Motion to Dismiss

1. The Tenants sought to have the Landlords' application dismissed as the Landlords have also filed a claim against the Tenants in Small Claims Court.
2. The doctrines of *res judicata* and *issue estoppel* promote fairness and integrity in the justice system by ensuring finality of decisions. The test for *issue estoppel* was set out by the Supreme Court in *Angle v. Minister of National Revenue, 1974 CanLII 168 (SCC), [1975] 2 S.C.R. 248* at p. 254:
 1. that the same question has been decided;
 2. that the judicial decision which is said to create the estoppel was final; and,
 3. that the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised.

3. In this case, the Small Claims Court matter has not been resolved and there is no order or judgment from any court or this Board with respect to the rent arrears being claimed by the Landlords in this application. Therefore, the first precondition necessary for the application of *issue estoppel* is not present and *issue estoppel* does not apply.

Admissibility of Tenants' Evidence not disclosed

4. During the second hearing date, the Tenants sought to submit and rely on additional evidence that was not disclosed to the Landlords. The Tenants submitted that they were not aware that they needed to submit copies of their utility bills in support of their section 82 issues and sought to gather and produce that evidence either during the hearing or after the conclusion of the hearing.
5. This was the parties second appearance before me on the Landlords' application. If the Tenants were seeking reimbursement of 30% of their utility bills, they ought to have been aware of the need to produce those bills in support of that request. Paragraph 4 of my interim order states that the parties are to provide to each other all documents, pictures and other evidence by May 20, 2024. Paragraph 5 of my interim order states that if a party fails to comply with paragraph 4, I may refuse to accept the evidence not disclosed. The Tenants had ample opportunity to gather and submit their evidence and failed to do so. For the above reasons, I did not allow the Tenants to submit additional evidence that was not disclosed.

N4 Notice

6. The Landlords 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.
7. As of the hearing date, the Tenants were still in possession of the rental unit.
8. The lawful rent is \$2,400.00. It is due on the 1st day of each month.
9. Based on the Monthly rent, the daily rent/compensation is \$78.90. This amount is calculated as follows: \$2,400.00 x 12, divided by 365 days.
10. The Tenants have not made any payments since the application was filed.
11. The rent arrears owing to May 31, 2024 are \$43,200.00.
12. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
13. The Landlords collected a rent deposit of \$2,400.00 from the Tenants and this deposit is still being held by the Landlords. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.

Section 82 Issues

14. At the hearing, the Tenants raised the following issues under section 82 of the *Residential Tenancies Act, 2006* (the 'Act'):

1. Interference with vital services;
2. Illegal entry and harassment from drilling in the front door lock;
3. Substantial interference from basement renovations;
4. The Landlords did not submit the basement tenants' portion of the utilities;
5. The Landlords changed the locks on the laundry room and did not provide the Tenants with a key; and
6. Walkway in disrepair.

Interference with Vital Services

15. The Tenant, Paul Dhillon ('PD'), testified that on May 8, 2023, he arrived home to no power or water in the rental unit. He testified that he contacted the utility company to inquire about any power outages in the area and he was advised that there was not. He testified that he then went across the street and spoke with the neighbour there, who confirmed that they had power. DM testified that there is a light in the hallway that is turned on when the basement tenants turn the lights in their unit. She testified that she saw that light on during the time the Tenants were without hydro in their own unit.

16. PD testified that he contacted the City to report the issue as he believed that the power and water were deliberately turned off by the Landlords. The Tenant, Dawn McLeod ('DM'), testified that an inspector from the City came out on May 9, 2024 and confirmed that there was no hydro or water in the rental unit. The City Inspector also contacted the Landlords and spoke with Aleksandra Sydrow regarding the issue. DM testified that hydro was restored to the rental unit on May 12, 2023 and that water was restored to the rental unit on May 16, 2023.

17. The Tenants submitted a copy of the report from the City of Brampton detailing the actions of the City inspector. This is hearsay evidence. While the Board has the discretion to admit and rely upon hearsay under section 15 of the *Statutory Powers Procedures Act*, courts have warned that adjudicators must be alive to the inherent unreliability of hearsay evidence, and to ensure that its admission does not result in a procedurally unfair hearing for the other party.

18. Generally, it is the Board's practice to prefer direct evidence over hearsay evidence. In this case, however, the Landlords did not attend the hearing to dispute that they were informed of the water and hydro issue in the unit by the City of Brampton Inspector or to give evidence on what steps they took to address the issues. In contrast, the Tenants gave direct evidence that there was no hydro or water in the rental unit for 8 days and the report from the City Inspector corroborates the Tenants' oral testimony.

19. I prefer the evidence of the Tenants. The Tenants provided direct evidence that there was no water or hydro in the rental unit, and their evidence was credible and supported by documentary evidence from a City inspector. While the Landlords submitted evidence of unpaid water utilities, it was undisputed that non-payment of the water utility would not

result in the City shutting of the water to the rental unit. DM also testified that she saw the hallway light on during the time that the Tenants were without hydro, signifying that it is likely that the basement tenants had hydro. The Landlords did not attend the hearing or provide any evidence as to why the rental unit had no hydro or power if they did not deliberately shut it off. For the above reasons, I find, on a balance of probabilities, that the Landlords interfered with the supply of vital services.

20. The Tenants are seeking a 30% rent abatement for the period of time they were without hydro and water.
21. DM testified that she was unable to shower due to not having water and still had to go to work. She testified that they were unable to cook, their food in their fridge went bad and they had to seek permission from a neighbour to run an extension cord to the rental unit just to plug their fridge in.
22. I am satisfied that a 30% rent abatement is reasonable for the interference. I am satisfied that the period of remedy for the interference with vital services is May 9, 2023, the date the Landlords were notified, until May 16, 2023, the date that all vital services had been restored to the rental unit, a total of 8 days. Therefore, the Tenants are entitled to a rent abatement of \$189.36. This amount will be deducted from the amount owing to the Landlords.

Illegal entry and harassment from drilling in the front door lock

23. DM testified that the incident of illegal entry and drilling in the front door lock occurred on April 19, 2023.
24. Section 29(1) of the Act states the following:

(1) A tenant or former tenant of a rental unit may apply to the Board for any of the following orders:

1. An order determining that the landlord has breached an obligation under subsection 20 (1) or section 161.

25. Section 29(2) of the Act states that no application may be made under subsection (1) more than one year after the day the alleged conduct giving rise to the application occurred.
26. The Tenants served the Landlords with written notice of the Tenants' intent to raise issues under section 82 of the Act on May 4, 2024. As the incident occurred more than one year prior to the Tenants' notice to the Landlords of their intent to raise those issues. As the Tenants are not within time to file an application under section 29 of the Act, I cannot make any order under section 30 of the Act and consequently this issue raised by the Tenants is dismissed.

Substantial interference from basement renovations

27. DM testified that the Landlords renovated the basement for six months prior to renting the basement out to other tenants. She testified that the renovations were completed on September 22, 2021.

28. As the issue raised was resolved more than one year prior to the Tenants' notice to the Landlords of their intent to raise those issues, the Tenants are not within time to file an application under section 29 of the Act, and I therefore cannot make any order under section 30 of the Act. Therefore, this issue raised by the Tenants is dismissed.

Basement tenants' portion of utilities

29. DM testified that at the commencement of the tenancy, the Tenants rented the entire house. In April 2022, the Landlord renovated the basement before renting the basement unit out to new tenants. DM testified that at the time the basement unit was rented out, the Landlord, Brian Sydrow ('BS'), agreed with the Tenants that they would pay 70% of the utilities and the basement tenants would pay 30% of the utilities, but the utilities would remain in the Tenants names. The Landlords did not attend the hearing to provide evidence to dispute the Tenants' evidence regarding the agreement.
30. DM testified that both the hydro and gas utilities are in their names, and they have been responsible for payment of those utilities. It was undisputed that the water utility is in the Landlords' names.
31. DM testified that on July 23, 2022, the BS emailed her requested copies of the utility invoices so that he could collect payment from the basement tenant before she vacated. DM testified that as of the date of the hearing, they have not received any payments from the Landlords nor any of the basement tenants for the basement tenants' portion of the utilities.
32. Based on the evidence before me, I find that the Landlords and the Tenants had an agreement that the basement tenants would pay 30% of the utilities and that the hydro and gas utilities are in the Tenants' names, and they are responsible for payment of those utilities to the respective utility companies. Therefore, I am satisfied that the Landlords have substantially interfered with the Tenants' reasonable enjoyment by failing to enforce their agreement that the basement tenants pay 30% of the total utilities for the property.
33. The Tenants are seeking out-of-pocket expenses for 30% of the total utilities the basement tenants were required to pay pursuant to their agreement with the Landlords. The Tenants did not provide copies of the utility bills or any evidence of the monthly cost of the utilities they were required to pay. Although I have no doubt the Tenants incurred some costs for covering the utilities of the basement tenants, the evidence is insufficient to calculate the costs incurred. As a result, I believe it is reasonable to award the Tenants a nominal amount of \$200.00 for out-of-pocket expenses incurred as a result of the interference for the one-year period from April 4, 2023 to May 4, 2024. This amount will be deducted from the amount owing to the Landlords.

Loss of the use of laundry room

34. DM testified that sometime in early 2023, the Landlords changed the locks to the laundry room in the rental unit. PD testified that the door locks from inside the basement tenants' unit and a key is then required for PD or DM to unlock the door. Both Tenants testified that as of the date of the hearing, they have not been provided with a key to unlock the laundry room door. PD testified that he had a conversation with the BS in the summer of 2023 regarding the laundry room door being locked.

35. PD testified that they only used the laundry for a couple of days when they convinced the basement tenant to unlock the door for them, but it has been locked every day before then and since then. PD testified that he tried the laundry room door the morning of the second hearing date and the door was locked. A copy of the tenancy agreement was entered into evidence showing that there is on-site laundry provided as a term of the tenancy.
36. The Landlord's Legal Representative submitted a copy of text messages exchanged between BS and the current basement tenant on May 8, 2024. In the text messages, the basement tenant confirms that the door to the laundry room is unlocked and that the Tenants have been using the laundry.
37. This is hearsay evidence. While hearsay evidence is admissible at the Board, it is generally given less weight. In determining the appropriate weight to assign the hearsay evidence, I must determine whether it was necessary for the Landlords to submit the hearsay evidence rather than attend themselves and have the basement tenant attend to testify to whether they keep the laundry room door locked.
38. The Landlord's Legal Representative submitted that there was insufficient time to summons the basement tenant to testify at the hearing. I find that it was not necessary for the Landlords to rely on the hearsay evidence in this case as the Landlords were aware of the Tenants' intention to raise this issue since May 4, 2024, when they were provided written notice of the Tenants' intention to raise this issue under section 82 of the Act and the Landlords did not make any attempt to summons the basement tenant or even reach out to see if they would be willing to testify at either hearing. Therefore, I give this evidence little weight.
39. I prefer the evidence of the Tenants. While the Tenants did not have any documentary evidence to support their oral testimony, their testimony was credible, and the Landlords' evidence was entirely reliant on hearsay testimony to which I have given little weight to. Therefore, I find, on a balance of probabilities, that the Landlords substantially interfered with the Tenants' reasonable enjoyment by changing the locks to the laundry room and not providing the Tenants with a key or ensuring the door is left unlocked for their use.
40. The Tenants are seeking a rent abatement of \$300.00 per month for the duration of time they have not had access to the laundry room. In this case, the Tenants could not recall when exactly that they told the Landlords and neither Tenant provided evidence that they notified the Landlords that the problem was ongoing after that conversation.
41. Although the Landlords were notified of the problem in the summer of 2023, the Landlords were not made aware that it was an ongoing problem. Accordingly, I considered the abatement for only the first month when the Landlords were notified.
42. With respect to the severity of the issue, the Tenants testified that they had to go to a laundromat to do their laundry, which they paid out of pocket for, and had to spend considerable time there to do the laundry.
43. I find that an abatement of 5% of the monthly rent for one month, being \$120.00, is reasonable in the circumstances of this case. This amount will be deducted from the amount owing to the Landlords.

Walkway in disrepair

44. DM testified that the walkway was in disrepair. She testified that the issue was resolved on April 1, 2022.
45. As the issue raised was resolved more than one year prior to the Tenants' notice to the Landlords of their intent to raise those issues, the Tenants are not within time to file an application under section 29 of the Act, and I therefore cannot make any order under section 30 of the Act. Therefore, this issue raised by the Tenants is dismissed.

Section 83

46. The Landlords are seeking a standard termination order. The Landlords' Legal Representative submitted that the arrears are substantial and causing the Landlords financial hardship.
47. The Tenants are seeking to preserve the tenancy. DM testified that they can pay \$500.00 towards the arrears, in addition to the full rent each month, until the arrears are paid off.
48. I find that it would not be fair in the circumstances to impose a repayment plan as I am not satisfied that the Tenants would abide by it for two reasons. First, since the application was filed, the Tenants have not made any payments towards the rent, despite DM being employed and receiving regular income. Second, DM testified that although they were not making any payments towards the rent, no money was put aside because the Tenants did not have any to put aside.
49. 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 postpone the eviction until June 30, 2024 pursuant to subsection 83(1)(b) of the Act.
50. The Tenants requested that eviction be postponed for five or six months as they have no family or support to assist them with moving. The arrears are substantial and have continued to increase, despite one of the Tenants having had income for the duration of the accrual of arrears. The Tenants have two children, ages ten and sixteen years old. The eviction is being postponed to provide the Tenants with time to find new living arrangements. Considering all of the above, it would be fair to postpone the eviction to June 30, 2024 and it would be unfair to postpone the eviction further.

Monetary Jurisdiction

51. **The Board's monetary jurisdiction is \$35,000 in accordance with section 207 of the Residential Tenancies Act, 2006 (the 'Act'). Section 207(3) of the Act states, "If a party makes a claim in an application for payment of a sum equal to or less than the Board's monetary jurisdiction, all rights of the party in excess of the Board's monetary jurisdiction are extinguished once the Board issues its order". The amount in excess of the \$35,000.00, therefore is extinguished.**

It is ordered that:

1. The tenancy between the Landlords 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 Landlords or to the LTB in trust:**

- \$42,876.64 if the payment is made on or before May 31, 2024. See Schedule 1 for the calculation of the amount owing.

OR

- \$45,276.64 if the payment is made on or before June 30, 2024. 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 June 30, 2024 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 June 30, 2024.**

5. If the Tenants do not void the order, the Tenants shall pay to the Landlords **\$35,000.00**. 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 Landlords 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 Landlords compensation of \$78.90 per day for the use of the unit starting May 25, 2024 until the date the Tenants move out of the unit.

7. If the Tenants do not pay the Landlords the full amount owing on or before June 30, 2024, the Tenants will start to owe interest. This will be simple interest calculated from July 1, 2024 at 7.00% annually on the balance outstanding.

8. If the unit is not vacated on or before June 30, 2024, then starting July 1, 2024, the Landlords 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 Landlords on or after June 30, 2024.

June 4, 2024
Date Issued

June 11, 2024
Date Amended



Candace Aboussafy
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 January 1, 2025 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 May 31, 2024

Rent Owing to May 31, 2024	\$43,200.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlords owes the Tenants for an abatement	- \$509.36
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$42,876.64

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before June 30, 2024

Rent Owing to June 30, 2024	\$45,600.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlords owes the Tenants for an abatement	- \$509.36
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$45,276.64

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

Rent Owing to Hearing Date	\$42,693.60
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$2,400.00
Less the amount of the interest on the last month's rent deposit	- \$0.00
Less the amount the Landlords owes the Tenants for an abatement	- \$509.36
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total amount owing to the Landlords	\$35,000.00
Plus daily compensation owing for each day of occupation starting May 25, 2024	\$78.90 (per day)