



Order under Section 69 Residential Tenancies Act, 2006

Citation: Armanios v Provost, 2024 ONLTB 1658

Date: 2024-01-22

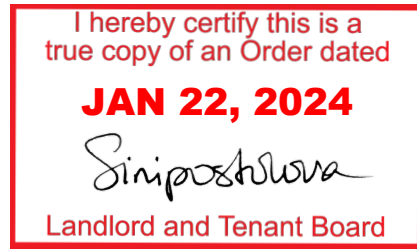
File Number: LTB-L-068022-22

In the matter of: 45 MORaine DR
WOODBRIDGE ON L4H2E5

Between: Vivian Armanios
Maria Today

And

Sharon Provost
Andrew Blackwood



Landlords

Tenants

Vivian Armanios and Maria Today (the 'Landlords') applied for an order to terminate the tenancy and evict Sharon Provost and Andrew Blackwood (the 'Tenants') because:

- the Tenants did not pay the rent that the Tenants owe (the L1 Application);
- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlords or another tenant (the L2 Application);
- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully or negligently caused damage to the premises (the L2 Application).

This application was heard by videoconference on November 30, 2023.

The Landlords' Legal Representative Glenn Gosling, the Landlords' Agent Sam Messiha, and the Tenants attended the hearing.

Preliminary Issues:

1. The Tenants requested to raise maintenance issues under section 82 of the *Residential Tenancies Act* (2006) (the 'Act') and reduce the rent owing via a rent abatement.
2. The Tenants did not notify the Landlords that they were intending to raise section 82 issues prior to the hearing. The Tenants did not submit any evidence regarding maintenance issues to the Landlords. When asked about why the Tenants did not serve their documents correctly, the Tenants said they did not know they were supposed to do so. I find that this is not a valid reason to fail to provide disclosure. All parties are required to read the notice of hearing and to apprise themselves of the basic procedure relating to their hearing, and to seek out legal advice if needed.

3. Since the Tenants did not comply with the Board's Rule 19.4 relating to disclosure, and the Tenants have their own T2/T6 already filed before the Board, I declined to consider the Tenants' maintenance issues under section 82 per Rule 19.5. However, I still heard the Tenants' testimony relating to serious, ongoing issues in the rental unit pursuant to section 83(3)(a) of the Act.

Determinations:

The L1 Application

1. 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.
2. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The lawful rent is \$3,500.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$115.07. This amount is calculated as follows: \$3,500.00 x 12, divided by 365 days.
5. The Tenants have not made any payments since the application was filed.
6. The rent arrears owing to December 14, 2023 are \$59,500.00.
7. The Landlords incurred costs of \$186.00 for filing the application and are entitled to reimbursement of those costs.
8. The Landlords collected a rent deposit of \$3,500.00 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.
9. Interest on the rent deposit, in the amount of \$169.77 is owing to the Tenants for the period from June 16, 2021 to November 30, 2023.

The L2 Application

10. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated.
11. The Landlords served the Tenants an N5 notice of termination for substantial interference with reasonable enjoyment and damages (the '1st N5') under section 62 and 64 of the Act on September 16, 2022, deemed to be served on September 21, 2022.
12. The 1st N5 alleges that the Tenants did not pay the utility costs they were required to pay under the terms of the tenancy agreement in the amount of \$2,093.58 towards electricity and \$1,839.90 towards gas. The 1st N5 also alleges that the Tenants wilfully or negligently damaged the front door, resulting in an estimate of \$7,684.00 in repair costs for the Landlords.
13. It is uncontested that the Tenants did not pay the Landlords the amount listed on the 1st N5 for utilities or for the damages within seven days of being given the 1st N5, or at any point

after that. As such, I find that the Tenants did not void the 1st N5 in accordance with subsections 62(3) and/or 64(3) of the Act.

14. The Landlords served the Tenants a second N5 notice of termination for substantial interference with reasonable enjoyment (the '2nd N5') on November 2, 2022, deemed to be served on November 7, 2022.
15. The 2nd N5 alleges that the Tenants continued not to pay their utility costs which resulted in the charge being added to the Landlords' property tax account in the amount of \$1,145.59. The 2nd N5 also alleges that the Tenants refused to allow the Landlords entry to the rental unit on September 23, 2022, September 29, 2022, and October 11, 2022. The 2nd N5 also alleges that the Tenants do not maintain the rental unit in an ordinary state of cleanliness, and that the Tenants behave in a verbally abusive manner towards the Landlords and the Landlords' agents.
16. The Tenants were in possession of the rental unit on the date the application was filed.

Utilities

17. The Landlords presented the tenancy agreement between the parties which indicates that the Tenants are responsible for paying electricity (Alectra), water (Alectra), and heat (Enbridge gas).
18. The Landlords presented unpaid utility bills going back to the very beginning of the tenancy which started in June 2021. The last, cumulative bill from Alectra utilities, due on October 23, 2023, was in the amount of \$5,638.51. The Alectra bills are addressed to the Tenant, Sharon Provost. The last, cumulative bill from Enbridge due on July 28, 2022, was in the amount of \$1,839.90. The Enbridge bills are addressed to the Tenant, Andrew Blackwood. The Landlords also presented a letter from the City of Vaughan indicating that, due to the non-payment of the water and wastewater charges, the arrears are added to the Landlords' property tax account in the amount of \$1,425.10.
19. Ms. Provost does not dispute that she did not pay any utility bills during the tenancy. Mr. Blackwood testified that he made payments towards the utilities to Ms. Provost. The Landlords have not paid the Tenants' utilities, and only incurred the charge which was added to the property tax account.
20. It is uncontested that the gas and electricity in the rental unit have been shut off.
21. I find that the Tenants have substantially interfered with a lawful right of the Landlords by failing to pay the utility costs that they were required to pay under the tenancy agreement.
22. The Landlords have incurred reasonable out-of-pocket expenses of \$1,425.10 as a result of the Tenants' failure to pay the utility costs as required under the tenancy agreement. However, since the Landlords did not claim any utilities charges on the application and did not request to amend the application at the hearing, I cannot make an order for payment of the Landlords' out-of-pocket expenses.

Damage

23. Mr. Messiha testified that he attended the rental unit in the summer of 2022 and saw that the front door was damaged. Mr. Messiha believes that the Tenants' dog chewed on the door frame heavily which resulted in the damage. Mr. Messiha estimates that the cost to replace the door and repair the door frame will be \$7,684.00.
24. Mr. Blackwood testified that the door had been broken when Mr. Messiha came to the rental unit to illegally evict the Tenants with the police.
25. The burden of proof is on the Landlords to show that the damage exists and that it was wilfully or negligently caused by the Tenants. The Tenants do not contest that there is some sort of damage to the door, but they do contest the cause and extent of the damage. In the absence of photographs and third-party estimates or invoices, I do not have sufficient evidence before me to make a finding on the extent and cause of the damage.
26. On a balance of probabilities, I find that there is some damage to the front door of the rental unit. However, I do not have sufficient evidence to make a finding that the damage was wilfully or negligently caused by the Tenants.
27. The Landlords' claim for termination of the tenancy based on the damages is dismissed.

Refusing entry

28. Mr. Messiha testified that the Tenants refused to allow him entry to the rental unit on numerous occasions, however Mr. Messiha could not remember specific dates on which entry was refused. Mr. Messiha also testified that he sent the Tenants notices of entry by text message but did not submit the messages as evidence.
29. I note that a landlord may only enter without notice to a tenant under section 26 of the Act in the case of an emergency or if the tenant consents to the entry at the time of the entry. In all other cases, a landlord may only enter a rental unit after giving 24 hours notice to a tenant in writing under section 27(3) of the Act. A tenant cannot be found to have refused a landlord entry to a rental unit if proper notice of entry was not provided by the landlord.
30. Given that Mr. Messiha could not recall specific dates on which the Tenants refused him entry to the rental unit and did not present evidence of the notices of entry he served to the Tenant, there is insufficient evidence for me to make a finding, on a balance of probabilities, that the Tenants refused entry to the Landlords.
31. The Landlords' claim for termination of the tenancy based on the allegations of the Tenants refusing entry to the rental unit is dismissed.

Cleanliness

32. Mr. Messiha testified that the Tenants' neighbours were complaining to the City of Vaughan regarding unkept grass, garbage in the shed, and mice around the rental unit. The Landlords did not provide any further specifics about the state of the rental unit, letters

of complaints, or photographs of the rental unit. The burden of proof is on the Landlords. The Landlords have not presented sufficient evidence for me to make a finding that there is a lack of cleanliness at the rental unit.

33. The Landlords' claim for termination of the tenancy based on the allegation of a lack of cleanliness in the rental unit is dismissed.

September 27, 2022 altercation

34. Mr. Messiha testified that on September 27, 2022, he was driving past the rental unit when Mr. Blackwood started following him in his car. Mr. Messiha testified that, after driving for several blocks, Mr. Blackwood came to Mr. Messiha's car and started yelling and punching the window and uttered threats to harm and kill him. According to Mr. Messiha, Mr. Blackwood had several people in his car. After the altercation, Mr. Blackwood followed Mr. Messiha to the police station and the police detective cautioned Mr. Blackwood not to contact Mr. Messiha.
35. Mr. Blackwood testified that on September 27, 2022, he had almost arrived at the rental unit after picking up his child from school when he saw Mr. Messiha exiting the rental unit. According to Mr. Blackwood, he followed Mr. Messiha and asked why he had been in the rental unit. Mr. Blackwood denied threatening Mr. Messiha.
36. I prefer the testimony of Mr. Messiha on this issue. Mr. Messiha had gotten noticeably upset when recalling this incident, which was consistent with his testimony of being afraid of Mr. Blackwood and his testimony regarding this particular event. Mr. Messiha had also been consistent and reliable in his evidence throughout his testimony. Mr. Blackwood has several inconsistencies in his testimony and behaved in a confrontational manner throughout the hearing, supporting the Landlords' allegations.
37. I find that Mr. Blackwood substantially interfered with Mr. Messiha on September 27, 2022 by following him in his car and behaving in a verbally abusive and confrontational way.

Relief from eviction

38. 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 Landlords attempted to negotiate a repayment agreement with the Tenants and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

Request for mandatory relief from eviction

39. Section 83(3)(a) of the Act requires me to deny eviction if the Landlords are in serious, ongoing breach of its obligations under the Act. The Tenants raised numerous issues and allegations against the Landlords. Of all the issues raised, the only ones I considered as serious and ongoing were the lack of heat, gas, and electricity in the rental unit as of the hearing date.

40. It is uncontested that the gas and electricity in the rental unit have been shut off. The furnace uses gas to produce heat, so by extension there is no heat in the unit either.
41. The Tenants testified that there is underlying disrepair in both the gas line and the electrical circuits and submit that this is the real reason why the utilities were shut off. Mr. Messiha denies there being any disrepair in the gas or electrical systems and submits that the utilities were shut off due to non-payment by the Tenants.
42. The burden of proof is on the Tenants to prove that the gas line and electrical circuits are in disrepair. The Tenants did not lead sufficient evidence for me to make such a finding. Given the extensive unpaid utility bills submitted by the Landlords, I find that the utilities were shut off due to the Tenants' non-payment of same.
43. Ms. Provost testified that she had fallen behind in paying the utilities because she had been taking care of an elderly person who passed, then she transferred from a full-time to part-time job, then didn't have the time to check or pay them. In cross-examination, Ms. Provost testified that she wasn't receiving the utility bills in the mail and got comfortable with not paying them.
44. Mr. Blackwood testified that he had not been receiving utility bills in the mail but had been making payments towards the utilities to Ms. Provost. Mr. Blackwood believes that his utility bills had been stolen. According to Mr. Blackwood, he was not aware that the utility bills were adding up because the account number had been changed. Mr. Blackwood further confirmed that he started receiving his bills after talking with a customer service representative at Enbridge in January 2023.
45. I find the Tenants' behaviour to be unreasonable, and Mr. Blackwood's testimony to be inconsistent. The Tenants signed a tenancy agreement for the use of the rental unit, which included the payment of utilities. The Alectra account is in Ms. Provost's name, the Enbridge account is in Mr. Blackwood's name, and the bills listing their names start in July 2021, which means they had to have set up the accounts at the beginning of the tenancy. If the Tenants were not receiving their mail, the Tenants ought to have contacted the utilities providers as Mr. Blackwood did in January 2023 and made alternate arrangements to receive the bills. The Tenants ought to have ensured that the utility companies were receiving their payments in order to maintain the gas and electricity supply to the rental unit.
46. Even though this is a serious, ongoing issue, it is not the result of the Landlords' breach of the Act. I find it unreasonable for a tenant to obtain relief on an issue that they, themselves, caused. That would create an egregious abuse of process and would be inconsistent with the intention of the Act. I will not deny eviction on the basis of the unpaid utilities.

Discretionary relief from eviction

47. Ms. Provost testified that she stopped paying the rent because she had been under the impression that the Landlords were going to sell the unit and relied on an offer made to her to terminate the tenancy in exchange for \$12,000.00. Ms. Provost continued to withhold rent due to various maintenance issues.
48. Mr. Blackwood testified that he was withholding rent due to his belongings being stolen and harassment from the Landlords. Mr. Blackwood testified that when he was on vacation

at Niagara Falls, the rental unit was broken into, and his belongings were stolen. Mr. Blackwood believes that Mr. Messiha stole his belongings. Mr. Messiha denied the allegations. In cross-examination, Mr. Blackwood stated that he got paid by his insurance company for his belongings and was continuing to seek a rent abatement out of principle, then contradicted himself by stating that he called the insurance company for compensation and was not paid.

49. The Tenants entered into a tenancy agreement which obligates them to pay rent to the Landlords in exchange for occupying the rental unit. The Tenants did not present any extenuating circumstances such as a loss of employment as a reason for falling behind. The Tenants chose not to pay their rent, to the point that the arrears are now almost double the Board's monetary jurisdiction.
50. The Tenants testified that they do not have the funds to repay the Landlords. Given that the Tenants have not made any, not even partial, rent payments to the Landlords in over a year, I find that a payment plan is not a valid resolution to this application.
51. The Tenants testified that they have three children in their care and that the children are depressed due to their housing situation. Ms. Provost also testified that, on her part-time income alone, she makes \$2,500 per month and has \$900 in monthly expenses. This leaves \$1,400 that can be paid towards rent at a new unit.
52. Given the substantial prejudice to the Landlords from the significant arrears, I find a delay of the eviction unreasonable in this case. The Tenants were aware of the potential eviction since October 2022 and have had over a year to find a new unit. The Tenants will have 11 days to remove their belongings from the rental unit.
53. Under section 207(1) of the Act, the Board may, where it otherwise has the jurisdiction, order the payment to any given person of an amount of money up to the greater of \$10,000 and the monetary jurisdiction of the Small Claims Court, which is \$35,000.00. Therefore, the maximum amount the Tenants will be required to pay if they move out is \$35,000.00 and the application filing fee.

It is ordered that:

1. Pursuant to the L2 Application, the tenancy between the Landlords and the Tenants is terminated. The Tenants must move out of the rental unit on or before February 2, 2024.
2. The Tenants shall pay to the Landlords \$35,186.00. This amount includes rent arrears owing up to the date of the hearing (capped at the LTB's monetary jurisdiction of \$35,000.00) and the cost of filing the application. The rent deposit and interest the Landlords owe on the rent deposit are deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
3. The Tenants shall also pay the Landlords compensation of \$115.07 per day for the use of the unit starting December 1, 2023 until the date the Tenants move out of the unit.
4. If the Tenants do not pay the Landlords the full amount owing on or before February 2, 2024, the Tenants will start to owe interest. This will be simple interest calculated from February 3, 2024 at 7.00% annually on the balance outstanding.

5. If the unit is not vacated on or before February 2, 2024, then starting February 3, 2024, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. 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 February 3, 2024.

January 22, 2024
Date Issued



Kate Sinipostolova
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 August 3, 2024 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 as the tenancy is terminated

Rent Owing To Hearing Date	\$57,841.12
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	- \$3,500.00
Less the amount of the interest on the last month's rent deposit	- \$169.77
Less the amount the Landlords owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$0.00
Less the excess above the Board's monetary jurisdiction	-\$19,171.35
Total amount owing to the Landlords	\$35,186.00
Plus daily compensation owing for each day of occupation starting December 1, 2023	\$115.07 (per day)