



Order under Section 69 Residential Tenancies Act, 2006

Citation: [REDACTED] Palangi 2024 ONLTB 55405

Date: 2024-07-30

File Number: LTB-L-050854-23

In the matter of:

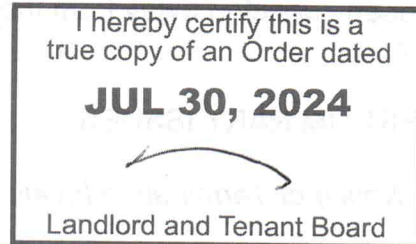
[REDACTED]
RICHMOND HILL ON L4C3T8

Between:

[REDACTED]

And

Mohammad Taghi Behrooz Palangi



Landlord

Tenant

[REDACTED] (the 'Landlord') applied for an order to terminate the tenancy and evict Mohammad Taghi Behrooz Palangi (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

Pursuant to section 82 of the *Residential Tenancies Act, 2006* (the 'Act') the Tenant applied for an order determining that the Landlord failed to meet the Landlord's maintenance obligations, or failed to comply with health, safety, housing or maintenance standards.

This application was heard by videoconference on July 18, 2024.

The Landlord and the Tenant attended the hearing. The Landlord was represented by [REDACTED] Markoff and called as a witness Ali Zaman (the Landlord's Representative).

Determinations:

1. This application involves a single-family home that the Tenant rents for \$3,000.00 per month. The tenancy commenced on October 1, 2022. At the time the tenancy agreement was entered into, the rental unit was owned by someone other than the current Landlord. In May of 2023 the current Landlord purchased the rental unit.
2. The Landlord alleges the Tenant is in arrears of rent of \$15,000.00 for the five month period June 1, 2023 to October 31, 2023. The Tenant says that is not true. It is his position that he had an agreement with the prior owner to deduct \$15,000.00, from the rent for repairs he did to the rental unit in the fall of 2022. The Tenant argues that if the current Landlord is not held to that agreement the Landlord has been unfairly bettered by the Tenant's investment in the repair work.
3. The Tenant also argues that the Landlord is currently in breach of her maintenance obligations in that there is an ongoing disrepair issue involving the eavestroughs. The Landlord says the Landlord responded reasonably and promptly to the Tenant's complaints about disrepair to the eavestroughs and the Tenant's claim should be

dismissed because the Tenant failed to mitigate and co-operate with the Landlord's attempts at repair.

4. For the reasons that follow the Landlord's application is granted. The Tenant shall have an opportunity to save the tenancy by paying the rent arrears owing. The Tenant's section 82 claim with respect to the alleged agreement in the fall of 2022 is dismissed as out of time. The claim with respect to the eavestrough is granted and an order shall issue requiring the Landlord to inspect the eavestroughs and repair or replace them so that rainwater is properly directed away from the rental unit and not onto walkways adjacent to the rental unit.

THE PRELIMINARY ISSUES

Is the Notice of Termination Invalid?

5. According to the materials filed with the application, the Landlord served the Tenant an N4 notice of termination by mailing it to him on June 28, 2023.
6. The problem that arises is that the N4 that the Landlord relies on identifies the street name of the rental unit as "Weldrick **Avenue** West" instead of the correct one "Weldrick **Road** West". The certificate of service filed with the application says it was mailed to the incorrect street name as well.
7. This means there are two potential problems with the N4: does it accurately identify the rental unit as required by s. 43(1)(a) of the Act; and did the Landlord properly serve it on the Tenant?
8. Despite the fact that the N4 was mailed to the Tenant using the wrong street address I am satisfied the Tenant was properly served with it. I say this because on June 28, 2023, the N4 was also e-mailed to the Tenant. The Tenant acknowledges the e-mail address used was correct and there is no dispute that in the tenancy agreement the Tenant consented in writing to service of documents by e-mail to the e-mail address used. As e-mail is a permitted method of service in these circumstances, pursuant to s. 191(1)(g) of the Act and Rule 3.1,h of the Board's Rules of Procedure, I am satisfied the N4 was given to the Tenant as required by the Act.
9. With respect to the error on the N4 regarding the street name suffix, there is nothing in the evidence to suggest that the Tenant was confused by the mistake or did not understand the notice of termination pertained to his tenancy. Pursuant to s. 212 substantial compliance respecting the contents of forms, notices or documents is sufficient. As the substitution of "Avenue" for "Road" on the N4 was clearly a typographical error and the reasonable person in the Tenant's position would have understood that, I am satisfied that the N4 substantially complies with the requirements of the Act and pursuant to s. 212 is not invalid.

The Board's Refusal to Accept the Tenant's Disclosure for Filing

10. Mid-way through the Tenant's testimony I discovered that when the Tenant attempted to send some of his disclosure to the Board in preparation for hearing, the Board wrote to him refusing to accept it. The Board's e-mail to the Tenant indicates that the staff person who

did this did so because the e-mail address the Tenant used to send his disclosure was slightly different than the one the Board had in its files and the name the Tenant used to sign off his e-mail did not include the first two of his three names listed above.

11. As a result of this problem, I stood the hearing down and permitted the Tenant to file any missing disclosure.
12. In the end result the additional disclosure did not add to the record before the Board as all it consisted of was additional receipts from the fall of 2022.

The Request for Anonymization

13. Near the beginning of the hearing the Tenant asked that an order issue requiring the Board to anonymize its order. The sole reason for the request was that the Tenant is concerned the evidence presented at the hearing might be damaging to his reputation.
14. Pursuant to the *Tribunal Adjudicative Records Act, 2019*, the Board's records, including its orders, are accessible to and available to the public without restriction. The identity of parties before the Board is therefore a matter of public record unless an order is issued restricting access or publication.
15. Pursuant to s. 2(2)(b) the *Tribunal Adjudicative Records Act, 2019*, the Board may order a portion of the record be kept confidential because of intimate financial information if the information is of such a nature that the public interest or that of the Tenant outweighs the desirability of adhering to the principle that the record be open to the public. Case law suggests that for such an order to issue it must be necessary to prevent a serious risk to the proper administration of justice.
16. Here, any embarrassment the Tenant might experience as a result of his financial circumstances being published in a Board order does not present a serious risk to the proper administration of justice. As a result, the Tenant's request is denied.

THE LANDLORD'S ARREARS OF RENT APPLICATION

17. There is no dispute between the parties that the lawful monthly rent is \$3,000.00. It is due on the first day of each month. After the current Landlord purchased the property in May of 2023, the Tenant withheld the rent for five months covering the period June 1, 2023, to October 31, 2023. Therefore, the arrears of rent owing total \$15,000.00.
18. As of November 1, 2023, the Tenant recommenced paying the monthly rent on time and in full.

THE TENANT'S SECTION 82 CLAIMS

19. The Tenant's claim asserted by way of section 82 of the Act is two-fold. The first claim consists of a list of repairs the Tenant says he did in the rental unit in the fall of 2022. The remedy sought is reimbursement for the costs he incurred doing those repairs. The second claim is with respect to the eavestroughs. The Tenant says they do not function properly, and the Landlord has failed to repair them.

The Repairs Done in the Fall of 2022

20. The Tenant alleges that sometime in the fall of 2022 he and the prior landlord agreed that the Tenant would perform some maintenance tasks in the rental unit and in exchange the Tenant would be permitted to deduct the cost from the rent at the end of the lease's one-year fixed term. The Tenant says the expenses incurred totalled about \$15,000.00 and he recovered his costs by not paying the rent for the five-month period June 1, 2023 to October 31, 2023, as agreed.

21. The Landlord questions the existence of any such agreement as it was never reduced to writing and the lease agreement between the parties includes a specific acknowledgement that the unit was "in a first class condition and state of repair" and further states:

The Tenant will paint the premises at the Tenants Expenche (*sic*) to all Neutral Colours. Tenant Will Also remove the carpet staples from the bedroom floors. Tenant will remove all debris from the garage. Tenant will also clear all the weeds from the driveway. Tenant will also install blinds for the windows and will remove them upon vacating the property.

22. The receipts produced by the Tenant show that the largest expenditure he incurred by far was for the cost of painting the rental unit as contemplated by the lease agreement. Unless the paint on walls and ceilings of a rental is in a state of disrepair, a tenant who wants to paint to suit their own taste is normally responsible for that cost. Therefore, the Landlord argues that it is absurd that the prior landlord would agree to pay the Tenant for that expenditure given the clear intent and content of the written lease agreement.

23. For my purposes here, it does not matter if there was an agreement between the prior landlord and the Tenant as the Tenant claims. If the Tenant wanted to assert a claim for disrepair to the rental unit, a breach of s. 20(1) of the Act, and seek recovery for expenses related to that disrepair, pursuant to s. 29(2) he had one year from the date the disrepair was resolved to make a claim for the reimbursement he says he is entitled to. As the disrepair was resolved by sometime in the fall of 2022 and the Tenant's section 82 claim form was filed on July 8, 2024, the Tenant's claim with respect to disrepair is out of time (see s. 29(2)).

24. That being said, the breach the Tenant complains of can be looked at in a slightly different way. Essentially, he is alleging that the Landlord substantially interfered with his reasonable enjoyment by failing to honour the agreement for reimbursement made with the prior landlord. Pursuant to s. 18 of the Act, covenants run with the land so an argument could be made any agreement with the first landlord is binding on the current one.

25. But even if I accept such an argument might succeed, in this instance it cannot because it is still out of time. The reneging on the agreement which is the breach complained of in this alternative way of looking at the issue occurred when the current Landlord refused to honour the agreement by pursuing the Tenant for rent arrears. That occurred on June 28, 2023, when the Landlord served notice of termination on the Tenant for non-payment of rent. As the Tenant did not file his section 82 claim until July 8, 2024, even in this alternative way of arguing the issue, the Tenant is still beyond the one-year limitation period set out in s. 29(2).

26. Therefore, the Tenant's claim for set off of \$15,000.00 for repairs done by him in the fall of 2022 must be dismissed as out of time.

The Eavestroughs

27. The Landlord's Realtor has functioned as the Landlord's point person with the Tenant since she purchased the property.
28. Both the Tenant and the Landlord's Realtor say the Tenant complained about the eavestroughs overflowing and failing to direct rainwater and snow melt away from the rental unit causing pooling on adjacent walkways and slippery conditions when the temperature dropped.
29. After the Landlord purchased the rental unit, the Tenant contacted the Landlord's Realtor and asked that the problem with the eavestroughs be remedied. The Landlord's Realtor sent a contractor to address the problem. As far as I can tell from the parties' evidence the eavestroughs were cleared and some sort of sealant was applied.
30. The Tenant says whatever work was done did not resolve the problem, so he complained again. The Landlord's Realtor asked him to provide dates for a return visit by the contractor which the Tenant failed to do. According to the Tenant, at some point in time prior to this subsequent complaint the Tenant came to believe the Landlord's contractor disconnected his internet and the Landlord was not intending to fix the problem with the eavestroughs. Accusations about the internet made by the Tenant appear to have resulted in the Tenant telling the Landlord's Realtor the contractor could not attend without his consent. When no dates were offered by the Tenant for another attendance, the Landlord's Realtor did nothing further with respect to the eavestroughs.
31. The first question that arises with respect to the eavestroughs is whether they are in a state of disrepair. I agree with the Tenant that they are. A photograph entered into evidence shows water pouring down from the eavestroughs onto a pathway adjacent to the rental unit. In other words, the eavestroughs are not directing water away from the home or the areas immediately adjacent to the rental unit as they are supposed to.
32. The Landlord takes the position that the Landlord's Realtor responded to the Tenant's complaints in a reasonable manner and the Landlord should not be liable to the Tenant for the malfunctioning eavestroughs as a result.
33. The problem with that argument is the Landlord's response did not resolve the situation. The response may have been timely, but it was not effective.
34. I would also observe that a tenant does not get to dictate to a landlord when repairs will be done, who will do them, or how. That is all up to the landlord. It is the landlord's obligation to do any repairs needed after giving appropriate notice to a tenant. So it was not open to the Landlord here to simply give up on the problem just because the Tenant did not want the contractor to attend or failed to give the Landlord's Realtor dates.
35. As a result, I am satisfied that by failing to ensure the eavestroughs are working properly and directing water away from the rental unit and its adjacent pathways, the Landlord breached s. 20(1) of the Act.

36. That leaves the issue of remedy. The only remedy the Tenant requested on his s. 82 claim form is "pay portion of my rent" which I take to mean a request for abatement of the Tenant's rent. The difficulty with that request is that the Tenant has essentially failed to mitigate his damages as required by s. 16 of the Act by telling the Landlord's Realtor not to attend the rental unit with the contractor without the Tenant consenting and then failing to provide dates when the contractor could attend. Although the Landlord could and should have proceeded with the work anyway, the Landlord's failure to do so is, at least in part, the Tenant's fault. Given the circumstances here I am not prepared to order abatement of the rent for the Landlord's breach in the past.
37. However, the Tenant is entitled to a working eavestrough system, and the Landlord is obligated to repair it. As a result, an order shall issue abating the rent into the future. If the Landlord does not do the work necessary to ensure the eavestroughs are working as intended then the Tenant shall be entitled to deduct 5% of the rent charged from the rent for the period commencing September 1, 2024, and continuing until the eavestroughs are repaired and in good working order. That amount of abatement is proportional to the loss of value represented by the malfunctioning eavestroughs and consistent with my knowledge of like, similar cases before the Board.

RELIEF FROM EVICTION

38. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of 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. The Tenant will be given an opportunity to remain in the rental unit if he pays to the Landlord the rent arrears owing in accordance with the schedule set out below. I say this for the following reasons.
39. The Tenant says he wants to remain in the rental unit and asks for a repayment plan of \$300.00 a month. He says he is self-employed and his average monthly take home is \$5,000.00 to \$6,000.00 but he is off work right at the moment due to a concussion he suffered when he fell off a ladder about a month ago. He has no idea when he will be back to work.
40. I would note at this point that the Tenant impliedly blames the Landlord for his fall off the ladder. He says it occurred when he was trying to do something to the eavestroughs and as a result of subsidence to the paving stones caused by rainwater falling and pooling. Whether that is true or not is not particularly relevant to the application before the Board. No claim was made by the Tenant with respect to subsiding paving stones and no claim was made for damages arising from the breach with respect to the eavestroughs.
41. What is important and relevant to section 83(1) of the Act is the Tenant's statement that he is currently not working and will need to borrow money to pay the rent and arrears and is looking for roommates to help him.
42. But in response to questions about assets the Tenant replied that he has about \$12,000.00 in savings in the bank, approximately \$5,000.00 to \$6,000.00 in stocks, and on cross-examination revealed he owns a home. He says the home he owns is unoccupied and needs a lot of work. He also says he has two cars, one of which he intends to sell but provided no valuation for them.

43. The Landlord says that when she purchased the rental unit it was with the intention of moving in with her newborn child, but she has not been able to regain possession of the rental unit. The Tenant's non-payment of the rent has caused her some financial strain. She has borrowed money from friends which she must repay but she also acknowledges that the mortgage on the rental unit is more than the monthly rent. She also says she can pay her bills on time, but it is difficult, and she is still not working again after giving birth to her child.
44. Neither party led any evidence as to whether the Landlord attempted to negotiate a repayment plan, nor is there any evidence before the Board that suggests the on-going COVID-19 pandemic has impacted either party's finances.
45. Given all of the above, it seems to me some sort of repayment plan would not be unfair to the Landlord. She has been getting the monthly rent in full and on time since November 1, 2023, and despite facing financial strain, she is managing to cope with her finances. That being said, the Tenant has considerable financial resources available to him in the form of assets and granting a repayment plan of \$300.00 a month would be unconscionable given those assets. As a result, the Tenant will be required to pay the rent arrears to the Landlord in three instalments of \$5,000.00 and rent on time until the arrears are paid in full.
46. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of that cost.
47. For completeness, I would also note that there is no argument or evidence before the Board in support of the proposition that the Landlord is in serious breach of her obligations or that s. 83(3) in any way applies here.
48. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The Tenant shall pay to the Landlord \$15,186.00 for arrears of rent up to July 31, 2024, and costs.
2. The Tenant shall pay to the Landlord the amount set out in paragraph 1 above in accordance with the following schedule:
 - a) \$5,000.00 on or before August 15, 2024;
 - b) \$5,000.00 on or before September 15, 2024; and
 - c) \$5,186.00 on or before October 15, 2024.
3. The Tenant shall also pay to the Landlord new rent on time and in full for the period August 1, 2024 to October 31, 2024, or until the amount owing under paragraph 1 is paid in full whichever date is earlier.
4. If the Tenant fails to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenant to the Landlord pursuant to paragraph 1 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenant, apply to the Board within 30 days of the Tenant's breach pursuant to section 78 of the Act for an order terminating the tenancy

and evicting the Tenant and requiring that the Tenant pay any new arrears, NSF fees and related charges that became owing after July 31, 2024.

5. The Tenant is authorized to deduct 5% of the monthly rent charged from the rent as it comes due commencing September 1, 2024 and continuing until the Landlord ensures the eavestroughs are functioning properly and are directing rainfall and snow melt away from the rental unit and the pathways immediately adjacent to it.

July 30, 2024

Date Issued

Ruth Carey

Ruth Carey

Vice Chair, 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.