



Order under Section 69 Residential Tenancies Act, 2006

Citation: ~~XXXXXXXXXX~~ v Downey-sparks, 2023 ONLTB 53197

Date: 2023-07-28

File Number: LTB-L-021240-23

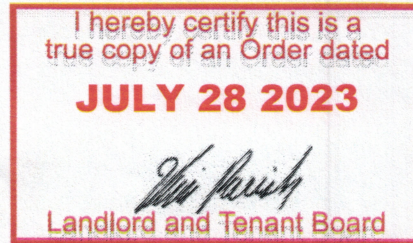
In the matter of: 14, 1150 STROUD LANE
MISSISSAUGA ON L5J0B3

Between:

~~XXXXXXXXXX~~

And

Kyliene Downey-Sparks



Landlords

Tenant

~~XXXXXXXXXX~~ (the 'Landlords') applied for an order to terminate the tenancy and evict Kyliene Downey-Sparks (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlords also claimed charges related to NSF cheques.

This application was heard by videoconference on July 6, 2023. Both Landlords and the Landlords' legal representative Sharda Sankar Bickram Singh attended the hearing. As of 1:58 pm, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. 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.
2. The N4 notice was served on the Tenant by email as noted within the Certificate of Service. The lease agreement produced for the hearing stipulates that the parties agreed to service of documents by email during the tenancy. The Landlord produced a copy of an email with the N4 notice attached which was sent to the Tenant on February 21, 2023 at 6:14 am. Based on this evidence, I accept that the N4 notice was properly served on the Tenant.
3. As of the hearing date, the Tenant was still in possession of the rental unit.
4. The lawful rent is \$2,900.00. It is due on the 24th day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$95.34. This amount is calculated as follows: \$2,900.00 x 12, divided by 365 days.

6. The Tenant has not made any payments since the application was filed.
7. The rent arrears owing to July 23, 2023 are \$18,525.00
8. The Landlords are entitled to \$40.00 to reimburse the Landlords for administration charges and bank fees the Landlord incurred as a result of 2 cheque given by or on behalf of the Tenant which was returned NSF.
9. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
10. The Landlords collected a rent deposit of \$2,900.00 from the Tenant 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.
11. Interest on the rent deposit, in the amount of \$23.64 is owing to the Tenant for the period from March 10, 2023 to July 6, 2023.
12. The Landlords stated on July 4, 2023, they emailed the Tenant and included a copy of the notice of hearing and the L1 update sheet, noting the arrears up to June 24, 2023. The Landlords stated they attempted to negotiate a repayment of the arrears with the Tenant without success. The Landlords stated these attempts took place via verbal discussion, text message (May 19, 2023), and email (June 29, 2023).
13. The Landlords stated that the Tenant paid the monthly rent for the first 8 months of the tenancy. The rent arrears have continued increasing since December 2022. The Landlords stated that they are small business owners who have gone into debt due to the arrears. The Landlords stated that one of the Landlords ~~XXXXXXXXXX~~ lost her job one week prior to the hearing.
14. 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. I find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The Tenant did not attend the hearing, has made no payments towards the rent arrears since the application was filed on March 10, 2023. I find the amount of the arrears are significant. I find the Landlords to be credible and I accept that the arrears have adversely impacted them financially.

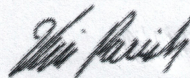
It is ordered that:

1. The tenancy between the Landlords 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 Landlords or to the LTB in trust:**
 - \$21,651.00 if the payment is made on or before August 8, 2023. 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 August 8, 2023 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 August 8, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlords \$13,488.65. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application and unpaid NSF charges. The rent deposit and interest the Landlords owe on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlords compensation of \$95.34 per day for the use of the unit starting July 7, 2023 until the date the Tenant moves out of the unit.
7. If the Tenant do not pay the Landlords the full amount owing on or before August 8, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 9, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before August 8, 2023, then starting August 9, 2023, 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 August 9, 2023.

July 28, 2023
Date Issued



Kimberly Parish
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 February 9, 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 Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before August 8, 2023

Rent Owing To August 23, 2023	\$21,425.00
Application Filing Fee	\$186.00
NSF Charges	\$40.00
Less the amount the Tenant paid to the Landlords since the application was filed	- \$0.00
Total the Tenant must pay to continue the tenancy	\$21,651.00

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

Rent Owing To Hearing Date	\$16,186.29
Application Filing Fee	\$186.00
NSF Charges	\$40.00
Less the amount the Tenant paid to the Landlords since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$2,900.00
Less the amount of the interest on the last month's rent deposit	- \$23.64
Total amount owing to the Landlords	\$13,488.65
Plus daily compensation owing for each day of occupation starting July 7, 2023	\$95.34 (per day)