



OCT 20, 2023

Elan Shemtov

Landlord and Tenant Board

**Order under Section 69
Residential Tenancies Act, 2006**

Citation: Vorich v Hodgkinson, 2023 ONLTB 68917

Date: 2023-10-20

File Number: LTB-L-078990-22

In the matter of: 66 TODD CRES
DUNDALK ON N0C1B0

Between: Eric Vorich Landlord

And

Catherine Hodgkinson Tenant

Eric Vorich (the 'Landlord') applied for an order to terminate the tenancy and evict Catherine Hodgkinson (the 'Tenant') because:

- the Tenant did not pay the rent that the Tenant owes (L1 application)
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant (L2 application)

This application was heard by videoconference on October 10, 2023.

The Landlord's Representative Lorrie Mccullough and the Tenant attended the hearing.

Determinations:

L2 Application

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the Tenant must vacate the rental unit by November 15, 2023. This is a non-voidable ground for termination.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On November 23, 2022, the Landlord gave the Tenant an N5 notice of termination deemed served that date. The notice of termination alleges substantial interference with the Landlord's rights, specifically s. 6 of the Lease Agreement that requires the Tenant to pay the water charges.
4. The Landlord's N5 notice states on November 8, 2022, the Landlord received a notice from the municipality advising of utility arrears totalling \$710.53. The notice advised the Landlord that the balance had been rolled into their tax account due to no payments on the account. The N5 notice attached the invoice and notice from the municipality.

5. The N5 notice was not voided within 7 days. The Landlord received a payment from the Tenant for \$705.00 on December 19, 2022. This is not for the full amount or within 7 days. I will further address this below for relief from eviction.
6. While the Landlord did not submit the Lease Agreement that is the basis for their claim, at the hearing the Tenant did not deny they were responsible for paying for the water; they did not cross-examine the Landlord or make any submissions on this issue and there is also undisputed evidence that they did make at least one payment for the water. Therefore, the Lease Agreement is no longer a necessary piece of evidence as the Tenant did not contest the claim or supporting evidence at all.

L1 Application

7. The Landlord 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.
8. As of the hearing date, the Tenant was still in possession of the rental unit.
9. The lawful rent is \$2,250.00. It is due on the 1st day of each month.
10. Based on the Monthly rent, the daily rent/compensation is \$73.97. This amount is calculated as follows: \$2,250.00 x 12, divided by 365 days.
11. The Tenant has paid \$1,250.00 to the Landlord since the application was filed.
12. The rent arrears owing to October 31, 2023 are \$23,500.00.
13. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
14. The Landlord collected a rent deposit of \$1,825.00 from the Tenant 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.
15. Interest on the rent deposit, in the amount of \$124.30 is owing to the Tenant for the period from May 31, 2019 to October 10, 2023.

Relief from Eviction

16. 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 November 15, 2023 pursuant to subsection 83(1)(b) of the Act.
17. I am not granting the Tenant's proposed payment plan of \$600.00 arrears payments per month as that would be a 39 month term and unfair to the Landlord in these circumstances. The Tenant has been receiving payments each month from the Child Care Benefit and ODSP, but has only paid \$1,250 since the application was filed on December 18, 2022 (i.e. 10 months ago) when her monthly rent is \$2,250. The arrears have since accumulated to \$23,500.

18. In addition, the Tenant is not paying the water bills which are being added to the Landlord's property tax bill. At the hearing, the Landlord submitted that water bills in the amounts of \$408.80, \$619.47, and \$382.24 were transferred to the Landlord's property taxes or going to be as a result of the Tenant not paying.
19. I have also considered the Tenant's proposal in terms of the prejudice the Landlord would experience from the payment plan. The Landlord submitted that they are an individual owner of the property who are solely responsible for carrying the property costs. I recognize that the Tenant is a single mother and that there are children residing in the rental unit, but it would be unfair to the Landlord to impose this payment plan in these circumstances.
20. As for the delayed eviction of 15 days from the standard order termination date, it is not unfair in the circumstances. This application was originally scheduled to be heard on January 9, 2024 and the arrears would have accumulated to \$32,000 by then. The Landlord's request to expedite the hearing was granted which effectively removed 3 months of their wait time until a hearing.
21. More importantly, the prejudice to the Landlord by the delayed eviction of 15 days is outweighed by the prejudice the Tenant would experience if her and her children were rendered homeless from not having enough time to find another place to live. It would however be unfair to the Landlord to delay the eviction by 60-90 days as requested by the Tenant.
22. Finally, had this only been an L2 application, I would have granted a conditional order regarding payment of the utilities based on the Tenant's payment of \$705 within one month of receiving the N5 notice. However, given the L1 application, a conditional order is not appropriate in the circumstances.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. This is a non-voidable order as a result of the L2 application being granted.
2. **The Tenant must move out of the rental unit on or before November 15, 2023.**
3. The Tenant shall pay to the Landlord \$20,226.40. 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 Tenant. See Schedule 1 for the calculation of the amount owing.
4. The Tenant shall also pay the Landlord compensation of \$73.97 per day for the use of the unit starting October 11, 2023 until the date the Tenant moves out of the unit.
5. If the Tenant does not pay the Landlord the full amount owing on or before November 15, 2023, the Tenant will start to owe interest. This will be simple interest calculated from November 16, 2023 at 7.00% annually on the balance outstanding.
6. If the unit is not vacated on or before November 15, 2023, then starting November 16, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

7. 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 16, 2023.

October 20, 2023
Date Issued

Elan Shemtov

Elan Shemtov
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 16, 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 as the tenancy is terminated

Rent Owing To Hearing Date	\$23,239.70
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,250.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$1,825.00
Less the amount of the interest on the last month's rent deposit	- \$124.30
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$20,226.40
Plus daily compensation owing for each day of occupation starting October 11, 2023	\$73.97 (per day)