



Order under Section 69
Residential Tenancies Act, 2006

File Number: CEL-01558-21

In the matter of: 338 VANDUSEN AVENUE
DUNDALK ON N0C1B0

Between: Beauty Oziegbe Landlord

and

Crystal Prickett Tenant

Beauty Oziegbe (the 'Landlord') applied for an order to terminate the tenancy and evict Crystal Prickett (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (L1 application) and because the Tenant another occupant of the rental unit or someone he permitted in the residential complex has wilfully or negligently caused undue damage to the premises. The Landlord has also applied for an order requiring the Tenant to compensate the Landlord for the damage (L2 application).

This application was heard by way of video conference on October 21, 2021. The Landlord and the Tenant attended the hearing. The Landlord was represented by Ian Gardner, Paralegal.

Determinations:

Adjournment request:

1. The Tenant requested that the matter be adjourned to a future date. The Tenant testified that she was not aware of the L1 proceedings on this date and believed that the hearing was strictly regarding the N5 notice of termination and the Landlord's L2 application. The Landlord objected to the Tenant's request.
2. The Boards records indicate that a copy of both the L1 and L2 application was mailed to the Tenant with the notice of hearing on August 24, 2021. There are no records of the documents being returned to the Board by Canada Post. The Landlord's legal representative further provided evidence that he sent the Tenant and the Board a copy of the L1/L9 update sheet prior to the hearing.
3. The Tenants adjournment request was denied as I was satisfied that the Tenant received notice of the hearing, along with both the L1 and L2 application and a copy of the L1/L9 update sheet. I find that the Tenant was made aware of the L1 application proceeding on this date.

L1 application:

4. The Tenant has not paid the total rent the Tenant was required to pay for the period from January 20, 2021 to November 19, 2021. Because of the arrears, the Landlord served a Notice of Termination effective May 7, 2021.
5. The Landlord collected a rent deposit of \$2,000.00 from the Tenant and this deposit is still being held by the Landlord.
6. Interest on the rent deposit is owing to the Tenant for the period from October 21, 2019 to May 7, 2021.
7. The Tenant paid \$2,445.00 after the application was filed.
8. The Tenant disputes the total amount of rent arrears owing to the Landlord. The Tenant argued that no rent arrears should be owing for the months of January, February or March 2021. The Landlord testified that no rent was paid for those months.
9. For the January 2021 rent, the Tenant testified that she paid \$1,900.00 towards the end of December 2020 by way of E-transfer. The Tenant did not provide proof of payment at the hearing and further did not submit any post hearing submission to show proof of payment for January 2021 as directed at the hearing.
10. In *Mauti v. Gibbs*, 2019 ONSC 3355 (CanLII), the Divisional Court held at paragraph 27 that while the Landlord bears the burden of proof in a rent arrears application, it is it is difficult for a landlord to prove a negative (i.e. non-payment of rent). Therefore, “. . .while the ultimate persuasive burden never shifts, once a landlord denies receiving funds, the tenant will have an evidentiary burden or a chance to advance some evidence to positively prove that he or she paid rent.”
11. In this I find that the Tenant has not established that she made a payment of \$1900.00 towards the January rent in late December 2020. If the Tenant paid by way of E-transfer, there is no reason as to why the Tenant was unable to provide proof of payment.
12. With respect to the disputed February and March 2021 rent payments, the Tenant testified that towards the end of January 2021, the Landlord told the Tenant that she was selling the house and that the Tenant had to move out of the rental unit by March 20, 2021. The Tenant entered into evidence the text message discussion (TT exhibit#1). The Tenant argued that her February 2021 rent should have been waived and considered compensation under section 49.1 of the Act and that her last months rent deposit should apply for March 2021.
13. The Landlord does not dispute this discussion but testified that the property was never sold during this period, that the Tenant did not vacate the rental unit in March 2021. Both parties agreed that no N12 notice was served to the Tenant and that no proceedings commenced regarding eviction for purchasers' use.

14. As the Tenant was not served with an N12 notice of termination and the Board has not terminated the tenancy based on a notice served under section 49 of the Act, I find that the Tenant was not entitled to compensation under section 49.1 and had an ongoing obligation to pay rent, including rent for February 2021.
15. The evidence before the Board is also clear that the Tenant is still in possession of the rental unit and that the Landlord is still holding a last months rent deposit of \$2,000.00. As the Tenant never vacated the rental unit in March 2021, her last month's rent deposit cannot be applied to the March 2021 rent.
16. As such, I am satisfied that the Tenant owes to the Landlord, the rent for January, February, and March 2021. The Tenant did not dispute the arrears owing from April to October 2021.

L2 application:

17. The Landlord requested that the L2 application be withdrawn. In accordance with subsection 200(4) of the Act, I consent to the withdrawal of the application.

Relief from eviction:

18. At the hearing the Tenant testified that she was planning on vacating the rental unit during the middle of November 2021. The Tenant did not propose a repayment plan and advised that she no longer wishes to reside in the rental unit and simply requires few weeks to vacate.
19. As of the date of this order, the proposed termination date by Tenant has passed. As such, the Tenant has been provided the additional time requested. The arrears are substantial, and I find that any further delay would be prejudicial to the Landlord.
20. 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 and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

1. Unless the Tenant voids the order as set out below, the tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before January 5, 2022.
2. The Tenant shall pay to the Landlord \$16,867.93*, which represents the amount of rent owing and compensation up to December 20, 2021, less the rent deposit and interest the Landlord owes on the rent deposit.

3. The Tenant shall also pay to the Landlord \$65.75 per day for compensation for the use of the unit starting December 21, 2021 to the date the Tenant moves out of the unit.
4. The Tenant shall also pay to the Landlord \$201.00 for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing* on or before January 5, 2022, the Tenant will start to owe interest. This will be simple interest calculated from January 6, 2022 at 2.00% annually on the balance outstanding.
6. If the unit is not vacated on or before January 5, 2022, then starting January 6, 2022, 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 January 6, 2022.
8. If, on or before January 5, 2022, the Tenant pays the amount of \$21,756.00** to the Landlord or to the Board in trust, this order for eviction will be void. This means that the tenancy would not be terminated and the Tenant could remain in the unit. If this payment is not made in full and on time, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. The Tenant may make a motion to the Board under subsection 74(11) of the Act to set aside this order if they pay the amount required under that subsection on or after January 6, 2022 but before the Sheriff gives vacant possession to the Landlord. The Tenant is only entitled to make this motion once during the period of the tenancy agreement with the Landlord.

December 20, 2021
Date Issued



Fabio Quattrociochi
Member, Landlord and Tenant Board

Central-RO
3 Robert Speck Pkwy, 5th Floor
Mississauga ON L4Z2G5

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 July 6, 2022 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.

* Refer to section A on the attached Summary of Calculations.

** Refer to section B on the attached Summary of Calculations.

**Schedule 1
SUMMARY OF CALCULATIONS**

File Number: CEL-01558-21

A. Amount the Tenant must pay if the tenancy is terminated:

Reasons for amount owing	Period	Amount
Arrears: (up to the termination date in the Notice of Termination)	January 20, 2021 to May 7, 2021	\$6,432.88
Less the amount the Tenant paid to the Landlord		-\$2,445.00
Plus compensation: (from the day after the termination date in the Notice to the date of the order)	May 8, 2021 to December 20, 2021	\$14,925.25
Less the rent deposit:		-\$2,000.00
Less the interest owing on the rent deposit:	October 21, 2019 to May 7, 2021	-\$45.20
Amount owing to the Landlord on the order date: (total of previous boxes)		\$16,867.93
Additional costs the Tenant must pay to the Landlord:		\$201.00
Plus daily compensation owing for each day of occupation starting December 21, 2021:		\$65.75 (per day)
Total the Tenant must pay the Landlord if the tenancy is terminated:		\$17,068.93, + \$65.75 per day starting December 21, 2021

B. Amount the Tenant must pay to void the eviction order and continue the tenancy:

Reasons for amount owing	Period	Amount
Arrears:	January 20, 2021 to January 19, 2022	\$24,000.00
Less the amount the Tenant paid to the Landlord		-\$2,445.00
Additional costs the Tenant must pay to the Landlord:		\$201.00
Total the Tenant must pay to	On or before January 5, 2022	\$21,756.00

continue the tenancy:		
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