



Order under Section 69 Residential Tenancies Act, 2006

Citation: Syed v Hoag, 2023 ONLTB 16923

Date: 2023-01-26

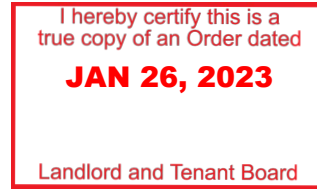
File Number: LTB-L-027768-22

In the matter of: 5, 250 Dunnette Landing Road
Roseneath ON K0K2X0

Between: Tariq Syed

And

Nancy Hoag



Landlord

Tenant

Tariq Syed (the 'Landlord') applied for an order to terminate the tenancy and evict Nancy Hoag (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 17, 2023. The Landlord and the Tenant attended the hearing. David Crow appeared as witness for the Landlord.

Determinations:

Adjournment request:

1. The Tenant requested an adjournment of the matter in or to prepare and file with the Board evidence to support harassment and maintenance claims pursuant to section 82 of the *Residential Tenancies Act, 2006* (the Act). The Landlord opposed the Tenant's request.
2. Section 82 of the Act states:

82 (1) At a hearing of an application by a landlord under section 69 for an order terminating a tenancy and evicting a tenant based on a notice of termination under section 59, the Board shall permit the tenant to raise any issue that could be the subject of an application made by the tenant under this Act if the tenant,

- (a) complies with the requirements set out in subsection (2); or
- (b) provides an explanation satisfactory to the Board explaining why the tenant could not comply with the requirements set out in subsection (2)

(2) The requirements referred to in subsection (1) are the following:

1. The tenant shall give advance notice to the landlord of the tenant's intent to raise the issue at the hearing.
2. The notice shall be given within the time set out in the Rules.
3. The notice shall be given in writing and shall comply with the Rules.

3. In accordance with section 82(2) of the Act, the Board's Rules of Procedure provide as follows:

19.4. Unless the LTB has directed or ordered otherwise, a tenant who intends to raise issues under sections 82(1) or 87(2) of the RTA during a hearing for a landlord's application about rent arrears shall provide the other parties and the LTB with the following at least 7 days before the scheduled CMH or hearing:

1. a written description of each issue the tenant intends to raise; and
2. a copy of all documents, pictures and other evidence that the tenant intends to rely upon at the hearing.

4. The Tenant testified that she received notice of hearing by the Board on December 22, 2022 and that on or about January 5, 2023 she spoke with her local legal aid clinic who instructed her to request an adjournment of the matter. The Tenant was unable to provide any reason as to why they failed to prepare or submit evidence in accordance with the Act and the Board's rules with respect to her section 82 concerns, despite receiving notice of hearing approximately one month prior to the hearing date.
5. In *Solomon v Levy, 2015 ONSC 2556 (CanLII)*, the Divisional Court upheld the Board's decision to deny the Tenants adjournment request to simply prepare for claims pursuant to section 82 of the Act. In *Solomon*, the presiding Member determined that, while the Tenants had the right to raise Section 82 issues at the hearing, it was the Tenants' responsibility to make sure that they were fully prepared to raise said issues at the hearing.
6. In consideration of the evidence and applying the test in *Solomon*, I denied the Tenant's adjournment request. I find that the Tenant had ample time to prepare and file their evidence to support their section 82 claims. I further note that the Tenant had met with her local legal aid clinic approximately 2 weeks prior to the hearing and failed to prepare or submit any evidence to the Board with respect to their section 82 concerns, but rather prepared arguments solely to adjourn the matter.
7. As such, the L1 application proceeded to be heard on its merits. The Tenant was advised that she could file her own application to address the concerns she intended to raise pursuant to section 82 of the Act.

Arrears of rent:

8. 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.
9. As of the hearing date, the Tenant was still in possession of the rental unit.
10. The lawful rent is \$1,500.00. It is due on the 1st day of each month.
11. Based on the Monthly rent, the daily rent/compensation is \$49.32. This amount is calculated as follows: \$1,500.00 x 12, divided by 365 days.

12. The Tenant has paid \$1,500.00 to the Landlord since the application was filed.
13. The rent arrears owing to January 31, 2023 are \$15,000.00.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. There is no last month's rent deposit.

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 February 28, 2023 pursuant to subsection 83(1)(b) of the Act.
17. The Tenant testified that on or about June 2021, she lost her employment and was relying on CERB payments throughout the remainder of 2021. The Tenants current household income is approximately \$1,265.00 per month and paid through Ontario Works (OW).
18. The Tenant also testified that she suffers from post-traumatic stress disorder (PTSD) and is in the process of applying for ODSP to increase her monthly income. The Tenant resides in the rental unit with her 19-year-old son who also suffers from attention deficit hyperactivity disorder (ADHD)
19. In consideration of the quantum of arrears and the Tenant's circumstances, including providing care for a child who suffers from a disability, I find it would not be unfair to delay termination to February 28, 2023 to allow the Tenant some additional time to secure alternate housing or to pay the arrears in full.

It is ordered that:

1. The tenancy between the Landlord 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 Landlord or to the LTB in trust:**
 - \$15,186.00 if the payment is made on or before January 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$16,686.00 if the payment is made on or before February 28, 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 February 28, 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 February 28, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$14,524.44. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$49.32 per day for the use of the unit starting January 18, 2023 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlord the full amount owing on or before February 6, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 7, 2023 at 5.00% annually on the balance outstanding.
8. If the unit is not vacated on or before February 28, 2023, then starting March 1, 2023, the Landlord 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 Landlord on or after March 1, 2023.

January 26, 2023
Date Issued



Fabio Quattrociochi
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 September 1, 2023 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.

*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

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 January 31, 2023

Rent Owing To January 31, 2023	\$16,500.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,500.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
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 the Tenant must pay to continue the tenancy	\$15,186.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before February 28, 2023

Rent Owing To February 28, 2023	\$18,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,500.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
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 the Tenant must pay to continue the tenancy	\$16,686.00

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

Rent Owing To Hearing Date	\$15,838.44
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,500.00
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	- \$0.00
Less the amount of the interest on the last month's rent deposit	- \$0.00
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	\$14,524.44
Plus daily compensation owing for each day of occupation starting January 18, 2023	\$49.32 (per day)