

Walsh v Mcgrath, 2023 CanLII 131464 (ON LTB)

Date: 2023-01-24
File number: LTB-L-014414-22
Citation: Walsh v Mcgrath, 2023 CanLII 131464 (ON LTB),
<<https://canlii.ca/t/k2jjb>>, retrieved on 2024-02-10



Tribunals Ontario
Landlord and Tenant Board

Tribunaux décisionnels Ontario
Commission de la location immobilière

Order under Section 69 Residential Tenancies Act, 2006

File Number: LTB-L-014414-22

In the matter of: 1, 465 ELMA ST W
LISTOWEL ON N4W1W2

Between: John Walsh Landlord

And

Melissa Mcgrath
Tenant

John Walsh (the 'Landlord') applied for an order to terminate the tenancy and evict Melissa Mcgrath (the 'Tenant') because:

- the Tenant did not pay the rent that the Tenant owes (L1 Application); and
- the Tenant has been persistently late in paying the Tenant's rent; (L2 Application).

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on January 24, 2023.

Only the Landlord and their Representative Zeeshan Rahman attended the hearing.

As of 10:10a.m., 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:

L1 Application – Non-Payment of Rent

1. 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.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$1,511.87. It is due on the 1 day of each Monthly.
4. Based on the Monthly rent, the daily rent/compensation is \$49.70. This amount is calculated as follows: \$1,511.87 x 12, divided by 365 days.
5. The Tenant has paid \$1,002.00 to the Landlord since the application was filed.
9. The rent arrears owing to January 31, 2023 are \$18,209.87.
11. 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 \$1,475.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit will be applied to the last rental period of the tenancy as the tenancy is terminated.
15. Interest on the rent deposit, in the amount of \$26.29 is owing to the Tenant for the period from November 1, 2020 to January 24, 2023.

L2 Application – Persistent Late Payment of Rent

16. The Tenant has persistently failed to pay the rent on the date it was due. The rent is due on the 1 day of each month. The rent has either been paid late or not at all 25 times in the past 25 months. Specifically rent was paid:

1. January 8, 2021 rent paid
2. February 2021 no rent paid
3. March 17, 2021 rent paid plus some arrears
4. April 1, 2021 partial rent paid
5. May 6, 2021 partial rent paid
6. June 4 and 30, 2021 rent paid plus some arrears
7. July 2021 no rent paid
8. August 2021 no rent paid
9. September 20, 2021 rent paid plus some arrears
10. October 14, 20, 21, 27, 2021 rent paid plus significant arrears payments
11. November 19 and 30, 2021 two partial rent payments
12. December 2021 no rent paid
13. January 2022 no rent paid
14. February 2022 no rent paid
15. March 2022 no rent paid
16. April 2022 no rent paid
17. May 2022 no rent paid
18. June 13, 2022 partial rent paid
19. July 2022 no rent paid
20. August 2022 no rent paid
21. September 2022 no rent paid
22. October 2022 no rent paid
23. November 2022 no rent paid
24. December 2022 no rent paid

25. January 2023 no rent paid

17. I make the findings of fact regarding when rent was paid based upon the information on the N8 Notice of Termination and the Landlord's rent ledger.

Relief from Eviction

18. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. I make that determination based upon the testimony of the Landlord that they rely on the rent payments to pay their mortgage. Additionally, I do not think relief from eviction in the form of a payment plan and pay on time order would be fair in the circumstances as I do not believe the Tenant would abide by such an order as they have not paid any rent since June 2022 and are in significant arrears. The Tenant also did not attend the hearing to provide any evidence relevant to my analysis.

It is ordered that:

1. Pursuant to the L2 Application, the tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before February 18, 2023.
2. The Tenant shall pay the Landlord \$16,574.99. 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 are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
3. The Tenant shall also pay the Landlord daily compensation of \$49.70 per day for the use of the unit starting January 25, 2023 to the date the Tenant moves out of the unit.
4. If the Tenant does not pay the Landlord the full amount owing on or before February 18, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 19, 2023 at 5.00% annually on the balance outstanding.
5. If the unit is not vacated on or before February 18, 2023, then starting February 19, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. 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 February 19, 2023.

February 7, 2023

Date Issued

Amanda Kovats
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 of the Tenant expires on August 19, 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.

**Schedule 1
SUMMARY OF CALCULATIONS**

A. Amount the Tenant must pay as the tenancy is terminated

Rent Owing To January 24, 2023	\$ 18,892.28
Application Filing Fee	\$186.00

NSF Charges	\$ 0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,002.00
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	- \$1,475.00
Less the amount of the interest on the last month's rent deposit	- \$ 26.29
Total amount owing to the Landlord	\$16,574.99
Plus daily compensation owing for each day of occupation starting January 25, 2023:	\$49.70 (per day)