



Order under Section 69 Residential Tenancies Act, 2006

Citation: Van den Hurk v Armstrong, 2022 ONLTB 11735

Date: 2022-11-17

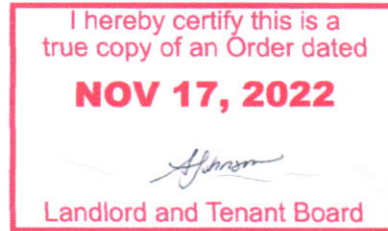
File Number: LTB-L-021898-22

In the matter of: 2, 7407 COUNTY RD 91
STAYNER ON L0M1S0

Between: Isabel Van den Hurk

And

Shaylah Armstrong, Trenton Miner



Landlord

Tenant

Isabel Van den Hurk (the 'Landlord') applied for an order to terminate the tenancy and evict Shaylah Armstrong, Trenton Miner (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on November 7, 2022.

The Landlord, the Landlord's Representative and the Tenant Shaylah Armstrong attended the hearing.

Determinations:

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 \$1,290.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$42.41. This amount is calculated as follows: \$1,290.00 x 12, divided by 365 days.
5. The Tenant has paid \$5,160.00 to the Landlord since the application was filed.
6. The rent arrears owing to November 30, 2022 are \$5,160.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. At the hearing the Tenant submitted that she has not resided in the rental unit for 3-4 months due to domestic issues between herself and the other Tenant Trenton Miner and that she has reached out to the Landlord to be removed from the lease.

9. The Landlord's Representative submitted that while the Landlord was aware of the domestic issues as a result of a domestic incident in the rental unit involving the police, the Tenant had the option of filing a N15 notice with the Landlord. It was only at the time of the hearing that the Landlord became aware of the Tenant, Shaylah Armstrong having moved out of the rental unit.
10. Since moving into the rental unit on March 15, 2022, in the first month of tenancy the Tenants were in arrears of rent as of April 2022. Submitted into evidence were a number of text exchanges between the Landlord and Tenants in respect of making rent payment and repayment arrangements, it was stated that the Landlord had met their obligation pursuant to subsection 83(6) of the Act.
11. It is undisputed that the Landlord through their own efforts or through the engagement of the Landlord's Representative had ongoing communication with the Tenants, this is depicted in consistent text and email communications for the months of April through November, leading up to the date of hearing.
12. The Landlord collected a rent deposit of \$1,290.00 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.
13. Interest on the rent deposit, in the amount of \$10.09 is owing to the Tenant for the period from March 16, 2022 to November 7, 2022.
14. We 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. The Tenant appearing at the hearing Shaylah Armstrong no longer resides in the rental unit, the other Tenant failed to attend the hearing to provide evidence of their circumstances. The Landlord testified that they are unaware of any circumstances that would cause us to delay or deny an eviction.
15. This order contains all of the reasons for the decision within it. No further reasons shall be issued

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:**
 - \$5,346.00 if the payment is made on or before November 28, 2022. 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 November 28, 2022 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 November 28, 2022**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$3,052.78. 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.
6. The Tenant shall also pay the Landlord compensation of \$42.41 per day for the use of the unit starting November 8, 2022 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 November 28, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 29, 2022 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before November 28, 2022, then starting November 29, 2022, 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 November 29, 2022.

November 17, 2022
Date Issued



Alicia Johnson
Member, Landlord and Tenant Board



William Greenberg
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 29, 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 November 28, 2022

Rent Owing To November 30, 2022	\$10,320.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$5,160.00
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	- \$
Total the Tenant must pay to continue the tenancy	\$5,346.00

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

Rent Owing To Hearing Date	\$9,326.86
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$5,160.00
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	- \$1,290.00
Less the amount of the interest on the last month's rent deposit	- \$10.09
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	- \$
Total amount owing to the Landlord	\$3,052.78
Plus daily compensation owing for each day of occupation starting November 8, 2022	\$42.41 (per day)