



Order under Section 69 Residential Tenancies Act, 2006

Citation: Karpelson v Sokolov, 2023 ONLTB 68600

Date: 2023-10-20

File Number: LTB-L-040859-23

In the matter of: 21 LASKIN DR
MAPLE ON L6A5A4

Between: Elena Karpelson

And

Ela Sokolov

I hereby certify this is a
true copy of an Order dated

Oct. 20, 2023

Landlord and Tenant Board

Landlord

Tenant

Elena Karpelson (the 'Landlord') applied for an order to terminate the tenancy and evict Ela Sokolov (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 10, 2023. The Landlord, the Landlord's Legal Representative, J. Behar, the Tenant's Legal Representative, E. Aptekar, and the Tenant attended the hearing.

Preliminary Issues:

- a. The Tenant stated that the N4 notice of termination was defective because the rent period showed that the rent is due on the first day of the month but based on the tenancy agreement, rent is due on the fifteenth day of each month. The Landlord argued that the rent is due on the first and that the tenancy agreement was amended to show the tenancy commenced on July 1, 2021 rather than July 15, 2021.
- b. I reviewed both the original tenancy agreement and the amended copy. The Tenant agreed that the amendment meant the tenancy commenced on July 1, 2021 but continued to argue that the rent is due on the fifteenth day. The parties agreed that at the commencement of the tenancy, the Tenant paid the rent for the first month and two month's rent was applied to the last month of the tenancy. The Landlord, at my request, provided a copy of cheques issued by the Tenant on August 1, 2021 and September 1, 2021, for the payment of the monthly rent.
- c. As the tenancy undisputedly commenced on July 1, 2021, the first month's rent was applied to July 2021 and the Tenant subsequently paid the rent for August 2021 and September 2021 on the first day of both months. Although, the tenancy agreement shows the rent is due on the '15th', that was an error that should have been replaced with '1st' in the revised tenancy agreement. The rent is due on the first day of each month.
- d. The Tenant alleged that a payment of \$1,000.00 was made in February 2023, but she was not credited with that payment. A review of the ledger provided by the Landlord showed that

the payment of \$1,000.00 was credited to the Tenant for the month of January 2023 because she paid a thousand dollars less in January 2023. As the Tenant also paid December 2022 rent \$1,000.00 less as well, a payment of \$1,000.00 on January 3, 2023 was applied to December 2022. The Landlord's pattern was to apply the payment to the last period arrears was owed. The Tenant was credited the payment of \$1,000.00 made in February 2023.

- e. The Tenant also claimed she made a payment of \$1,000.00 to the Landlord by cash on January 20, 2023 and this payment was made on the 20th of every month by cash. The Landlord denied this assertion stating that the last time the Tenant made a payment by cash was November 2022 and after receiving an N4 notice at that time, proceeded to make payments only by e-transfer.
- f. The Tenant, who claimed the money with which she made the payment, was sent to her by her parents through others, was unable to substantiate the claim and throughout the proceeding, I found the Landlord credible in her testimony which was more detailed than required and she kept diligent records. I find on a balance of probabilities that the Tenant did not make a payment of \$1,000.00 by cash on January 20, 2023.
- g. The Tenant claimed that she paid two months rent as last month's rent deposit, \$7,000.00, in contravention of the Residential Tenancies Act, 2006. The Landlord did not dispute the claim but testified that one month's rent from the last month's rent deposit was applied to March 2022 at the Tenant's request. The Tenant opposed the Landlord's claim by arguing that she paid the rent by e-transfer in March 2022 but did not have any evidence to substantiate the claim.
- h. The Landlord on the other hand, provided an email from March 2022, translated from Russian language, in which the Tenant asked the Landlord to sign a prepared letter stating that the Tenant had not paid the rent in March 2022 and owed a portion of the rent for April 2022. In addition, the Landlord's ledger showed that the last month's rent deposit was applied to the month of March 2022. I prefer the evidence of the Landlord, although she was wrong to collect two month's rent as the last month's rent deposit, and find that one month's rent of \$3,500.00 was applied to the rent for March 2022, which was not paid by the Tenant.
- i. Although the Tenant claimed that she did not have an opportunity to provide proof of payment of the March 2022 rent, I offered to stand down the hearing to give her time to contact the bank. In the end, the Landlord's evidence was, again credible, and supported by evidence that the Tenant was unable to rebut.
- j. The application is amended to reflect that a last month's rent deposit of \$3,500.00 is still being held by the Landlord.
- k. The Tenant further claimed that prior to receiving the notice of termination that formed the basis of the Landlord's application, she received an earlier N4 notice which contained a different amount owed and was confused. The Landlord stated that she meant to raise the rent but realized an N4 notice was not the proper means to do so and subsequently served the current notice. At the start of the proceeding, the Tenant was not confused when she confirmed to the Board that she had not paid any rent to the Landlord since February 2023.

1. The Tenant also stated that the Landlord was permitted to provide evidence on the day of the hearing that was not previously disclosed and so the proceeding was 'a trial by ambush.' Due to the nature of the disagreement on when the rent was due, it was imperative to my decision that the Landlord provides proof showing when the rent was paid in August 2021 and September 2021 and the Tenant had a chance to review both cheques. Similarly, the email from March 2022 was important in assisting the Board make a decision on the last month's rent deposit. Neither document was lengthy or unfamiliar to the Tenant as they originated from her. Hence, there was no prejudice to the Tenant.

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 \$3,500.00. It is due on the first day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$115.07. This amount is calculated as follows: \$3,500.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to October 31, 2023 are \$31,500.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$3,500.00 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.
9. Interest on the rent deposit, in the amount of \$153.95 is owing to the Tenant for the period from July 1, 2021 to October 10, 2023.

Relief from Eviction

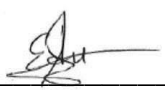
10. The Tenant has two young children and is required by a court order to live within the area the rental unit is located at. The Tenant recently started her own business and expects to receive monthly income of \$3,800.00 in addition to monthly support of \$1,000.00 from her mother. The Tenant recently had cancer surgery and will have further surgeries/therapy in the future.
11. The Tenant proposed a payment plan of \$300.00 in arrears in addition to the payment of the monthly rent. Given the Tenant's failure to pay rent since February 2023, I am not satisfied that she will comply with a conditional order.
12. I have considered all 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 30, 2023 pursuant to subsection 83(1)(b) of the Act. Despite substantial amount outstanding and the Tenant's failure to pay any rent since the

application was filed, additional time is given to the Tenant to secure alternative accommodation based on her circumstances.

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:**
 - \$31,686.00 if the payment is made on or before October 31, 2023. See Schedule 1 for the calculation of the amount owing.
- OR**
- \$35,186.00 if the payment is made on or before November 30, 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 November 30, 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 November 30, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$25,682.75. 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 \$115.07 per day for the use of the unit starting October 11, 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 October 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 31, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before November 30, 2023, then starting December 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 December 1, 2023.

October 20, 2023
Date Issued



Jitewa Edu
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 June 1, 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 to void the eviction order and continue the tenancy if the payment is made on or before October 31, 2023

Rent Owing To October 31, 2023	\$31,500.00
Application Filing Fee	\$186.00
Total the Tenant must pay to continue the tenancy	\$31,686.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before November 30, 2023

Rent Owing To November 30, 2023	\$35,000.00
Application Filing Fee	\$186.00
Total the Tenant must pay to continue the tenancy	\$35,186.00

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

Rent Owing To Hearing Date	\$29,150.70
Application Filing Fee	\$186.00
Less the amount of the last month's rent deposit	- \$3,500.00
Less the amount of the interest on the last month's rent deposit	- \$153.95
Total amount owing to the Landlord	\$25,682.75
Plus daily compensation owing for each day of occupation starting October 11, 2023	\$115.07 (per day)