



Order under Section 69 Residential Tenancies Act, 2006

Citation: Santo v Ellingson, 2024 ONLTB 8679

Date: 2024-01-31

File Number: LTB-L-066696-23

In the matter of: 111, 954 KING ST W
TORONTO ON M6K3L9

Between: Monica Santo

and

Robert Aaron Ellingson

I hereby certify this is a
true copy of an Order dated
Jan 31, 2024
Landlord and Tenant Board

Landlord

Tenant

Monica Santo (the 'Landlord') applied for an order to terminate the tenancy and evict Robert Aaron Ellingson (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 23, 2024.

The Landlord's Legal Representative, Roman Komorv, the Landlord and the Tenant attended the hearing.

Determinations:

Preliminary Issue – Adjournment Request

1. The Tenant requested an adjournment so that he could obtain legal representation. The Tenant testified that he was represented by a legal aid clinic but two weeks ago he was notified that they had to release him as their case load was too big. He testified that he contacted other legal clinics, but they did not have the capacity to take him on as a client.
2. The Landlord's Legal Representative contested the Tenant's request for an adjournment. He submitted that the arrears are substantial, and the Landlord has incurred significant debt due to the shortfall in rental income and an adjournment would be highly prejudicial to the Landlord.
3. The Tenant only contacted legal clinics to seek representative and did not contact any other lawyers or paralegals. In my view, the Tenant had a reasonable opportunity to obtain legal representation should he have wanted to be represented at the hearing but chose to restrict himself to legal clinics only and not seek out other options.
4. The adjournment request was denied because the arrears are substantial, the Tenant had sufficient opportunity to obtain alternate legal representation and there is no guarantee that should this matter be adjourned, that any legal clinic would have the capacity to take the Tenant on by that date.

The N4 Notice

5. 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.
6. As of the hearing date, the Tenant was still in possession of the rental unit.
7. The lawful rent is \$2,305.00. It is due on the 15th day of each month.
8. Based on the Monthly rent, the daily rent/compensation is \$75.78. This amount is calculated as follows: \$2,305.00 x 12, divided by 365 days.
9. The Tenant has not made any payments since the application was filed.
10. The rent arrears owing to February 14, 2024 are \$20,745.00.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. The Landlord collected a rent deposit of \$2,150.00 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 \$214.56 is owing to the Tenant for the period from November 15, 2017 to January 23, 2024.

Section 83

14. The Landlord is seeking a standard termination order. The Landlord's Legal Representative submits that the arrears are substantial, and the Landlord testified that she has been borrowing from her personal line of credit in order to continued to make her mortgage and property tax payments and ensure that the maintenance fees are paid. She submitted her line of credit statement in support of this statement.
15. The Tenant is seeking to preserve the tenancy. The Tenant testified that he lost his job in May 2023 and was denied EI at the time. He has been in receipt of Ontario Works since approximately August 2023. He testified that he was successful in grieving his dismissal and will be returning to work shortly. Although he does not have an official date of return to work, he expects it will be in February. He testified that he can pay up to \$1,000.00 in addition to the rent each month once he returns to work.
16. The Tenant also testified that he has put in applications to EPIC and the rent bank and if approved, each organization will pay \$4,000.00 of the rent arrears and he would then clear the balance owing much sooner.
17. I find that it would be unfair in the circumstances to impose the Tenant's requested payment plan for two reasons.
18. First, the Tenant has not made any payments since the application was filed, despite being in receipt of Ontario Works, which included an allowance for shelter which he chose not to pay to the Landlord.

19. Second, the length of time it would take to pay off the arrears under the proposed repayment plan, 20 months, is unreasonable and prejudicial to the Landlord who is already incurring interest charges on her personal line of credit. The Tenant does not have a clear return to work date and his estimated return date would leave him accruing further arrears before being in a position to make any payments under the proposed repayment plan.
20. 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 22, 2024 pursuant to subsection 83(1)(b) of the Act.
21. The Tenant requested that eviction be postponed for three months, given that it is winter. The arrears are substantial and have continued to increase. The Tenant does not have a vehicle and attends weekly therapy sessions nearby. The eviction is being postponed to provide the Tenant with time to find new living arrangements. Considering all of the above, it would be fair to postpone the eviction to February 22, 2024 and it would be unfair to postpone the eviction further.

It is ordered that:

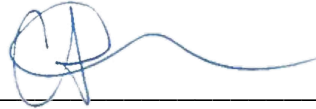
1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - **\$20,931** if the payment is made on or before February 11, 2024. See Schedule 1 for the calculation of the amount owing.

OR

 - **\$23,236.00** if the payment is made on or before February 22, 2024. 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 22, 2024 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 22, 2024**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord **\$16,943.46**. 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 **\$75.78** per day for the use of the unit starting January 24, 2024 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 22, 2024, the Tenant will start to owe interest. This will be simple interest calculated from February 23, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before February 22, 2024, then starting February 23, 2024, 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 February 23, 2024.

January 31, 2024
Date Issued



Candace Aboussafy
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 August 23, 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 February 11, 2024

| | |
|--|--------------------|
| Rent Owing to February 14, 2024 | \$20,745.00 |
| Application Filing Fee | \$186.00 |
| NSF Charges | \$0.00 |
| Less the amount the Tenant paid to the Landlord since the application was filed | - \$0.00 |
| 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 | \$20,931.00 |

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before February 22, 2024

| | |
|--|--------------------|
| Rent Owing to March 14, 2024 | \$23,050.00 |
| Application Filing Fee | \$186.00 |
| NSF Charges | \$0.00 |
| Less the amount the Tenant paid to the Landlord since the application was filed | - \$0.00 |
| 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 | \$23,236.00 |

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

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|--|----------------------|
| Rent Owing to Hearing Date | \$19,122.02 |
| Application Filing Fee | \$186.00 |
| NSF Charges | \$0.00 |
| Less the amount the Tenant paid to the Landlord since the application was filed | - \$0.00 |
| 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 | - \$2,150.00 |
| Less the amount of the interest on the last month's rent deposit | - \$214.56 |
| 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 | \$16,943.46 |
| Plus daily compensation owing for each day of occupation starting January 24, 2024 | \$75.78 (per day) |