



Order under Section 69 Residential Tenancies Act, 2006

Citation: Panesar v Manuruzzaman, 2023 ONLTB 49325

Date: 2023-10-10

File Number: LTB-L-037322-22

In the matter of: UPPER LEVEL UNIT, 22 PETERSON CRT
BRAMPTON ON L6Z1K6

Between: Ranjit Panesar

And

Moni Manuruzzaman

I hereby certify this is a
true copy of an Order dated
OCT 10, 2023
Landlord and Tenant Board

Landlord

Tenant

Ranjit Panesar (the 'Landlord') applied for an order to terminate the tenancy and evict Moni Manuruzzaman (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

This application was heard by videoconference on June 29, 2023.

The Landlord's Legal Representative Sarah Teal, the Landlord, the Tenant's Legal Representative Reginald Bent and the Tenant attended the hearing.

Determinations:

1. The Tenant raised numerous issues pursuant to section 82 of the *Residential Tenancies Act, 2006* (Act) in his disclosure. The Tenant's Legal Representative stated at the hearing that the removal of laundry facilities and the Tenant's inability to access his property stored in the garage were the issues to be heard. The legal representatives for the parties met in a private room and then informed me that the issues had been resolved.

L1 application

2. 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.
3. As of the hearing date, the Tenant was still in possession of the rental unit.
4. The lawful rent is \$2,100.00. It is due on the 1st day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$69.04. This amount is calculated as follows: \$2,100.00 x 12, divided by 365 days.

6. The Tenant has not made any payments since the application was filed.
7. The rent arrears owing to June 30, 2023 are \$29,400.00.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$2,100.00 from the Tenant. The rent ledger submitted into evidence by the Landlord indicates that the rent deposit was used for the month of May 2022. The Tenant did not agree that the deposit was used and stated that the deposit is still being held by the Landlord.
10. Interest on the rent deposit, in the amount of \$73.10 is owing to the Tenant for the period from August 1, 2021 to June 29, 2023.

Board's monetary jurisdiction

12. Section 207(1) of the Act provides that the Board cannot order a person to pay more than \$35,000.00.
13. This order terminates the tenancy and requires the Tenant to pay the rent arrears outstanding plus the cost of filing the application, and less the rent deposit being held by the Landlord. This amount, which the Tenant is being ordered to pay in accordance with subsection 74(3) of the Act, is under the Board's monetary jurisdiction of \$35,000.00.
14. The order also provides that the Tenant can choose to void the order in accordance with subsection 74(4) of the Act by paying the following amounts before the order is enforceable:

(a) the amount of rent that is in arrears under the tenancy agreement;

(b) the amount of additional rent that would have been due under the tenancy agreement as at the date of payment by the tenant had notice of termination not been given;

(c) the amount of NSF cheque charges charged by financial institutions to the landlord in respect of cheques tendered to the landlord by or on behalf of the tenant, as allowed by the Board in an application by the landlord under section 87;

(d) the amount of administration charges payable by the tenant for the NSF cheques, as allowed by the Board in an application by the landlord under section 87; and

(e) the costs ordered by the Board

15. The amount the Tenant must pay to void the order is over \$35,000.00. As the Tenant is not legally required to pay the amount necessary to void the order, I find that the monetary jurisdiction contained in section 207(1) of the Act does not apply to this portion of the order.

Relief from eviction

Tenant's Evidence

16. The Tenant agreed to the amount of arrears owing but stated that he needed three or four months in order to arrange a move in the case of an order for termination of the tenancy.
17. He testified that he is a single father of two daughters, ages 12 and 14 and that since October 2020, he and his ex-wife have had joint custody or "50/50" but he was currently "trying to change it" in family court. He was unable to clearly explain the custody arrangements but testified that despite this court-ordered custody agreement, the children have been living full time with him but that that his ex-wife receives the government benefits for the children.
18. He testified that he had been employed in risk management with an annual income of \$110,000.00 for approximately one and a half years until June 2022 but lost his employment due to COVID. He stated that he is currently receiving Employment Insurance benefits (EI) and has no other source of income. He also stated that his ex-wife receives 50% of his EI benefits, which leaves him with an income of \$620.00 every two weeks.
19. Although the evidence was unclear, at least one of the daughters has special needs. She has an Individualized Education Plan at school and the Tenant stated that she is seen 4 times per week (at school and at home) by a social worker, speech pathologist, and psychologist to assist with developmental delay, cognitive function, and motor skills. The Tenant testified that her school is 4 minutes away from the rental unit and he does not want her to lose her services. The other daughter is in the International Baccalaureate academic program. He testified that there is only one school that offers the program, and his daughter would be unable to attend if they were forced to move.
20. He stated that has been looking for a job every day for a year but would be unable to move until he finds employment. When asked in cross-examination about the efforts he has made to secure community assistance for rent payments, he stated that he was turned down for all funding including rent bank and housing stabilization funding as late as January 2023 because his previous income was too high.
21. The Tenant testified that he was unable to send the Landlord notification that he had lost his job, since he claimed that the Landlord's language and conduct toward him had caused him to block the Landlord's email. It was unclear if the Landlord had blocked the Tenant's email. He stated that he formerly paid his rent by e-transfer.
22. The Tenant testified that he had not heard from the Landlord about the rent arrears or an attempt to reach a payment agreement.
23. When asked why he had been unable to pay any amount toward rent in one year despite having a small income or if he had ever offered to make any payments, he stated that he had other expenses such as insurance and gas and very little left over with which to care for his daughters. He also stated that he was afraid that the Landlord would physically harm him because the Landlord had threatened him.
24. The Tenant testified that he has spoken with his mother and that she might be able to assist him with some rent payments, but he stated in cross-examination that he may have

asked her for the first time approximately 4 weeks prior to the hearing and that her assistance had not yet been confirmed.

Landlord's Evidence

25. It was the Landlord's evidence that multiple letters were sent to the Tenant attempting to work out a payment arrangement. No payment agreement was reached. These letters were not submitted as evidence.
26. The Landlord testified that the lack of any rent payments since May 2022 has caused him great mental and financial strain. He stated that he has a variable rate mortgage on the property and that the payments have almost doubled in the past year due to rising interest rates.
27. The Landlord testified that his wife and three daughters have also been impacted because the family has had to cut discretionary expenses. He described himself as "financially and mentally broken."
28. He stated that he does not think that the Tenant's daughters reside full time in the rental unit. He testified that he attends the property weekly to collect mail, and while he saw the children in 2021, he has not seen them since on the days that he has been at the property.

Analysis

29. The Tenant agreed that the rent arrears are owing and that he has made no payments in approximately one year. The only issue for me to consider is whether to postpone the enforcement of any eviction order pursuant to section 83 of the Act.
30. The Tenant bases his request for three to four months' delay in the event of an eviction order on the needs of his children and his need to find employment before he can move.
31. While the Tenant stated that his daughter would lose access to the nearby school where she receives certain specialized services if he is required to move, there is no evidence before me that she would lose her services. The Tenant testified that the specialized workers come to school and to the home and did not lead evidence that this would not continue with a different school and residence. From a review of the Government of Ontario's education and training materials, an IEP must be developed for any student who has been identified by an Identification, Placement, and Review Committee as having exceptional needs or is deemed by the school board to require one.
32. The Tenant stated that his other daughter would lose her ability to participate in the International Baccalaureate (IB) program if they were not residing near the school. From knowledge of such matters, while there may be only one school in an area that offers the program, because it is a specialized program which draws from across regions, there is no reason that his daughter would lose access to it. While it might be less convenient to get there, that is not the same as losing access to an educational program.
33. The Landlord stated that he does not believe that the Tenant's daughters are residing with him full time because he has not seen them recently during his weekly visits to the rental unit to collect mail. This is speculation, and the Landlord has not provided evidence to support this allegation.

34. The Tenant's explanation of his custody arrangements (and why his wife would receive government benefits for the children and half of the Tenant's EI benefits if the children reside full time with him) was unclear at best.
35. While the Tenant bases his request for delay on his children, it was his evidence that he and his ex-wife have joint custody. The children therefore have a residence available to them if the tenancy is terminated.
36. I do not find it credible that the Tenant felt unable to pay rent because he feared harm from the Landlord. He stated that he formerly paid rent by e-transfer, which would not necessitate any interaction with the Landlord. He stated that he had blocked email from the Landlord, but no evidence was led by either party that the Landlord had blocked the Tenant's email. I find that such an action on the part of the Landlord would be highly unlikely, as that was the method by which the Landlord received rent.
37. The Tenant testified that although he was ineligible for community resource assistance with his rent, going forward his mother might be able to assist with rent until the Tenant is able to find alternative accommodations, but this has not been finalized. He did not testify as to when his EI benefits payments will cease.
38. While the Tenant suggested that he would need to find employment before he is able to secure alternative housing, it would be unfair to the Landlord to have to wait for this. It was the Tenant's testimony that he has already been looking for a year and has not managed to secure employment.
39. I am not convinced that, if granted an extension in the case of an order terminating the tenancy, the Tenant will be able to pay any rent to the Landlord before he vacates the rental unit. The Landlord provided evidence of significant prejudice due to the lack of rental income and severe impact both mentally and financially upon him and his family.
40. I 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.

L2 application

41. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy is terminated effective October 21, 2023.
42. The Tenant was in possession of the rental unit on the date the application was filed.
43. On June 10, 2022, the Landlord gave the Tenant an N8 notice of termination deemed served on June 15, 2022. The notice of termination contains the following allegations:
 - January 2022 rent paid January 4 (three days late)
 - February 2022 rent paid February 2 (one day late)
 - March 2022 rent paid March 2 (one day late)
 - April 2022 rent paid April 4 (three days late)

44. The Tenant has persistently failed to pay the rent on the date it was due. The rent is due on the 1st day of each month. The rent has been paid late four times in four months. The subsequent months until the date of the hearing were non-payment of rent.

Daily compensation, NSF charges, rent deposit

45. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

46. Landlord collected a rent deposit of \$2,100.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$73.10 is owing to the Tenant for the period from August 1, 2021 to June 29, 2023.

47. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

Relief from eviction

48. 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.

49. After the late payments, the Tenant made no payments toward rent before the date of the hearing one year later.

It is ordered that:

L1 application

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:**
 - \$37,986.00 if the payment is made on or before October 21, 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 October 21, 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 October 21, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$27,315.06. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application.
6. The Landlord did not submit evidence to refute the Tenant's claim that the rent deposit was still held being by the Landlord. The Landlord has the burden of proof, and therefore I am

not able to find in favour of the Landlord. 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.

7. The Tenant shall also pay the Landlord compensation of \$69.04 per day for the use of the unit starting June 30, 2023 until the date the Tenant moves out of the unit.
8. If the Tenant does not pay the Landlord the full amount owing on or before October 21, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 22, 2023 at 7.00% annually on the balance outstanding.
9. If the unit is not vacated on or before October 21, 2023, then starting October 22, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. 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 October 22, 2023.

L2 Application:

11. Even if the Tenant voids the eviction order for arrears of rent above, the tenancy between the Landlord and the Tenant is terminated due to persistent late payment of rent. The Tenant must move out of the rental unit on or before October 21, 2023.
12. If the unit is not vacated on or before October 21, 2023, then starting October 22, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
13. 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 October 22, 2023.

October 10, 2023
Date Issued



Margo den Haan
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 April 22, 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 21, 2023

Rent Owing To October 31, 2023	\$37,800.00
Application Filing Fee	\$186.00
Total the Tenant must pay to continue the tenancy	\$37,986.00

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

Rent Owing To Hearing Date	\$29,302.16
Application Filing Fee	\$186.00
Less the amount of the last month's rent deposit	- \$2,100.00
Less the amount of the interest on the last month's rent deposit	- \$73.10
Total amount owing to the Landlord	\$27,315.06
Plus daily compensation owing for each day of occupation starting June 30, 2023	\$69.04 (per day)