



Order under Section 69 Residential Tenancies Act, 2006

Citation: Lunsky v Bonnar, 2023 ONLTB 20407

Date: 2023-02-10

File Number: LTB-L-016800-22

In the matter of: 309 MARKHAM ST
TORONTO ON M6G2K8

Between: Marvin Lunsky Landlord

And

Michael Jesse Bonnar Tenant

Marvin Lunsky (the 'Landlord') applied for an order to terminate the tenancy and evict Michael Jesse Bonnar (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlord also applied for an order to terminate the tenancy and evict the Tenant because the Tenant has been persistently late in paying the Tenant's rent.

This application was heard by videoconference on February 7, 2023.

Only the Landlord's Legal Representative Liam Walker attended the hearing.

As of 10:55 a.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:

1. The Tenant paid the Landlord for the period ending February 28, 2023. The amount paid represents all the rent that was in arrears under the tenancy agreement, all additional rent that would have been due under the tenancy agreement on the date of the Tenant's payment, and the filing fee for this application.

The Landlord's application for an order terminating the tenancy and evicting the Tenant based upon arrears of rent is discontinued.

L2 Application – N8 notice of termination:

2. The Landlord applied for an order to terminate the tenancy and evict the Tenant because the Tenant persistently failed to pay rent when it was due. Rent is due on the first of the month and the tenancy is month to month.

3. The Landlord's representative testified that the Tenant has persistently failed to pay the lawful rent on the date it was due; the rent has been paid late commencing shortly after the tenancy began in April, 2020 and has continued until recently when the Tenant has started to pay on time.
4. Section 58 of the *Residential Tenancies Act, 2006*, (the 'Act') sets out that a landlord may give a tenant notice of termination of their tenancy if the tenant has persistently failed to pay rent on the date it becomes due and payable (N8 notice). The Landlord served the Tenant with a N8 notice on February 24, 2022 that is effective April 30, 2022. I accept the uncontested testimony and evidence of the Landlord's Legal Representative and am satisfied, on a balance of probabilities, that the Tenant has persistently failed to pay the rent on the date it was due.

Section 83 considerations

5. 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 grant relief from eviction subject to the condition(s) set out in this order pursuant to subsection 83(1)(a) and 204(1) of the *Act*.
6. The Landlord was seeking a conditional pay-on-time order as the Tenant has started to pay rent on time. The Landlord's uncontested evidence established that the Tenant persistently paid late however, I find that a pay-on-time order is appropriate in these circumstances. As termination is a remedy of last resort, I find the Tenant should be given another opportunity with a pay-on-time order.
7. The Landlord has incurred the cost of \$186.00 for filing the application but waives reimbursement of those costs.

It is ordered that:

1. The Tenant shall pay to the Landlord the full lawful rent owing on or before the first day of each month, commencing March 1, 2023 and for 12 months thereafter.
2. If the Tenant fails to comply with the conditions set out in paragraph 1 above, then, within 30 days of the breach, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlord must make any such application no later than thirty days after any such breach of the provisions contained in paragraphs 1 of this order.

February 10, 2023

Date Issued

Heather Chapple

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.