



Order under Section 69 Residential Tenancies Act, 2006

Citation: Velickovski v Mcneil, 2024 ONLTB 14441

Date: 2024-02-20

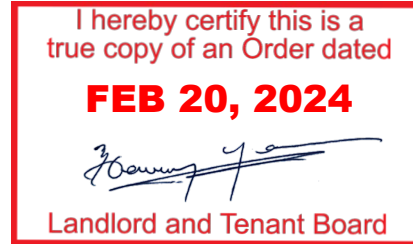
File Number: LTB-L-064481-23

In the matter of: 0209, 3200 WILLIAM COLTSON AVE
OAKVILLE ON L6H7W6

Between: Zoran Velickovski
Violeta Velickocska

And

Shane Mcneil



Landlords

Tenant

Zoran Velickovski and Violeta Velickocska (the 'Landlords') applied for an order to terminate the tenancy and evict Shane Mcneil (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 10, 2024.

The Landlords and the Landlords' Legal Representative, Kurt Shmuir, and the Tenant attended the hearing.

During the hearing, the Tenant disconnected, at approximately 3:30PM, and did not reconnect to participate in the hearings. At that point, the hearing proceeded on the Landlords evidence alone.

Determinations:

1. The Landlords 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 \$2,500.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$82.19. This amount is calculated as follows: \$2,500.00 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 January 31, 2024 are \$17,500.00.
7. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

8. The Landlords collected a rent deposit of \$2,500.00 from the Tenant and this deposit is still being held by the Landlords. 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 \$38.53 is owing to the Tenant for the period from May 31, 2023 to January 10, 2024.

Submissions

10. The Landlords submitted that there were discussions with the Tenant about payment plans to address the arrears at various times. However, no resolution could be reached.
11. The Tenant disputed that Landlords had reached out to him to arrange a payment plan. The Tenant submitted he did not know about the arrears, and only became aware of the situation when he received the Notice of Hearing. At that point, the Tenant submitted that he reached out to the Landlords, who directed him to the counsel. The Tenant testified that he called counsel on numerous occasions but received no reply. The Tenant testified that the only time the parties had spoken about a payment plan was during mediation on the day of the hearing.
12. The Tenant disputed the arrears. He submitted that the hot water did not work for the first two months of the tenancy and that there was a discussion with the Landlords about a rebate for those two months. The Tenant also submitted that he did not want to rent the place at the beginning.
13. The Tenant disputed that he had received the N4. The Tenant submitted to have not seen it or received it. When examined, the Certificate Of Service stated that service was via email. At the hearing, the Landlords provided a copy of the lease, which was written on the Standard Lease Form 2229e, and confirmed that the Tenant agreed to service via email.
14. The Tenant disputed that he agreed to service via email. When discussing the lease, the Tenant submitted that he did not agree to anything except paying the rent via email. I explained to the Tenant that he had checked the box that agreed to service of documents and Notices via email. The Tenant disagreed with this. The Tenant did not dispute the lease before me was the tenancy agreement.
15. The Tenant disputed the arrears. The Tenant submitted that he had been offered a rebate during mediation by the Landlords. I tried to explain to the Tenant that it wasn't appropriate to bring up in hearing what was discussed in mediation. The Tenant then expressed his frustrations and disconnected. At that point, the hearing proceeded on the Landlords' evidence alone.

Analysis

16. The Landlords Certificate of Service states that the N4 Notice was served via email. Service of Notices is in accordance with subsection 191(1) of the *Residential Tenancies Act, 2006* (the 'Act'), which states:

“191(1) A notice or document is sufficiently given to a person other than the Board,...

(g) **by any other means allowed in the Rules.**” [Emphasis mine]

17. The ‘other means allowed by the Board’ can be found in Rule 3.1(h) of the Board and reads as follows:

“by email if the person or party receiving it has consented in writing to service by email.”

18. The tenancy agreement between the parties used the Form 2229e provided by the Ontario government. As of August 2018, this is the form that the majority of tenancy agreements in the province are to be drafted upon. The contents are standardized and have a consistent meaning. In part 3, the contact section, of the Form, the Tenant checked the ‘Yes’ box, and provided his email contact, to the following:

“Both the landlord and tenant agree to receive notices and documents by email, where allowed by the Landlord and Tenant Board's Rules of Procedure.”

19. The Tenant did not dispute that the lease presented at the hearing was the tenancy agreement signed by both parties at the onset of the tenancy. Based on this evidence, I was satisfied and find that the Landlords had properly served the Tenant the N4 Notice.

20. While the evidence was not disclosed prior to the hearing, it was a preliminary issue that needed to be addressed. I exercised my discretion to allow the Landlords to submit this evidence during the hearing. This evidence was submitted by the Landlords pursuant to Rule 1.6(q) of the Board:

“exercise its discretion to permit a party's legal representative to give evidence where appropriate”

21. I do not believe the parties were prejudiced by this action. This was evidence provided in response to a preliminary issue raised by the Tenant. As the tenancy agreement utilized Standard Lease Form 2229e, it was reasonable for the Landlords to expect that they could expect to rely on the claim that there was email consent. The evidence itself was very simple and easy to understand. Little time was required to examine or respond to it. The lease agreement was between the two parties, and it was reasonable to expect that the parties would each have copies of the lease or would be aware of the contents of it. Finally, the Tenant did not dispute that the lease submitted by the Landlords was the tenancy agreement.

22. The Tenant briefly mentioned that there was no hot water at the onset of the tenancy for 2 months. However, no section 82 issues were raised prior to the hearing. Further, no evidence was submitted prior to the hearing. These issues were outside of the scope of this application.

23. As the Tenant did not provide any other evidence, I believe that the Landlords are correct. I find that the arrears owing to January 31, 2024 are \$17,500.00.

Section 83 Considerations

24. The Tenant had disputed that the Landlords had tried to resolve the arrears via payment plan, pursuant to subsection 83(6) of the Act. However, as the Tenant had left, this claim could not be further examined. As there was no further evidence to the contrary, I favour the Landlord's testimony. I find that the Landlord had tried to address the arrears via payment plan and has met their obligation under subsection 83(6) of the Act.
25. Landlords testified that they knew of no issues that should be considered to delay or deny eviction. As the Tenant did not rejoin the hearing, he could not inform me of his situation. The Landlords requested a standard order.
26. 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 Landlords 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.

It is ordered that:

1. The tenancy between the Landlords 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 Landlords or to the LTB in trust:**
 - \$20,186.00 if the payment is made on or before February 29, 2024. See Schedule 1 for the calculation of the amount owing.

OR

 - \$22,686.00 if the payment is made on or before March 2, 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 March 2, 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 March 2, 2024**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlords \$13,469.37. 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 Landlords 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 Landlords compensation of \$82.19 per day for the use of the unit starting January 11, 2024 until the date the Tenant moves out of the unit.

7. If the Tenant does not pay the Landlords the full amount owing on or before March 2, 2024, the Tenant will start to owe interest. This will be simple interest calculated from March 3, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before March 2, 2024, then starting March 3, 2024, the Landlords 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 Landlords on or after March 3, 2024.

February 20, 2024
Date Issued



Henry Yeung
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 September 3, 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 29, 2024

Rent Owing To February 29, 2024	\$20,000.00
Application Filing Fee	\$186.00
Total the Tenant must pay to continue the tenancy	\$20,186.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before March 2, 2024

Rent Owing To March 31, 2024	\$22,500.00
Application Filing Fee	\$186.00
Total the Tenant must pay to continue the tenancy	\$22,686.00

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

Rent Owing To Hearing Date	\$15,821.90
Application Filing Fee	\$186.00
Less the amount of the last month's rent deposit	- \$2,500.00
Less the amount of the interest on the last month's rent deposit	- \$38.53
Total amount owing to the Landlords	\$13,469.37
Plus daily compensation owing for each day of occupation starting January 11, 2024	\$82.19 (per day)