



Order under Section 69 / 89 Residential Tenancies Act, 2006

Citation: Warnock v Romaniuk, 2023 ONLTB 51450

Date: 2023-08-02

File Number: LTB-L-030625-22

In the matter of: 521 YORK ST
CORNWALL ON K6J3Z9

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

AUG 02, 2023

Between: Jeanie Warnock

Landlord

And

Landlord and Tenant Board

Alan Romaniuk

Tenant

Jeanie Warnock (the 'Landlord') applied for an order to terminate the tenancy and evict Alan Romaniuk (the 'Tenant') because:

- the Tenant did not pay the rent that the Tenant owes (L1 Application); and
- the Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex substantially interfered with the reasonable enjoyment of the residential complex or another lawful right, privilege or interest of the Landlord or another tenant, and because Tenant has been persistently late in paying the Tenant's rent (L2 Application).

The Landlord also applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

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

The Landlord and the Tenant attended the hearing.

Preliminary Issues

Adjournment Request

1. The Tenant requested an adjournment because he wanted to file additional evidence and raise issues under section 82 of the *Residential Tenancies Act, 2006* (the 'Act'). He said that the issues on the application are complex so he also wanted to seek legal advice. The Tenant said that he received the Notice of Hearing on March 24, 2023. The Board's records confirm that the Notice of Hearing was emailed to the Landlord and the Tenant on that date.

2. The Landlord opposed the adjournment request, saying that the Tenant has not paid any rent for 14 months and she is a small landlord suffering significant financial difficulty as a result. She said that she has already had to sell another property to cover her expenses. The Landlord also submitted that the Tenant has had adequate time to seek legal advice and to prepare for the hearing. She also said that she has in the past communicated directly with a lawyer for the Tenant.
3. The Tenant received the notice of hearing package more than two months before the hearing date. In addition to notifying the Tenant of the hearing date, the notice of hearing also provides information for how to contact the Tenant's local legal clinic, and it advises tenants to seek legal advice prior to the hearing. The notice of hearing and the email sent to the Tenant also provide information about submitting a list of issues to raise under section 82 of the Act, and about disclosing evidence in advance of the hearing.
4. The Tenant did not offer a reasonable explanation for why he did not seek legal advice in advance of the hearing, or why he did not submit a list of issues under section 82 of the Act or any evidence he intended to rely in advance of the hearing. Given that the Landlord claims that the Tenant has not paid any rent in 14 months and she is facing financial distress as a result, I determined that granting the adjournment would be prejudicial to the Landlord. Denying the adjournment would not prejudice the Tenant relative to his section 82 issues, because this does not preclude him from filing a tenant application to seek any remedy he believes he is entitled to.
5. The Tenant spoke with tenant duty counsel before the hearing. The Tenant may wish to seek further legal advice, but he had more than two months' notice of this hearing, during which time he could have sought legal advice and gathered, served, and filed his evidence and a list of issues he intended to raise under section 82. In *Q Res IV Operating GP Inc. v. Berezovs'ka*, 2017 ONSC 5541 (Can LII) at paragraphs 7-8, the Divisional Court found that "[l]ack of diligence in dealing with court proceedings is a reason for refusing to set aside an order where a party has failed to appear". Likewise, I find that the Tenant's lack of diligence in preparing for this hearing does not warrant an adjournment in these circumstances.
6. The adjournment request was therefore denied.

N5 Notices of Termination

7. The L2 Application is based on a second N5 notice of termination of tenancy, as well as an N8 notice of termination of tenancy and claim for compensation for undue damage caused to the rental unit or residential complex.
8. The second N5 notice was not dated or signed. Section 43 of the Act sets out the minimum requirements for a notice of termination of tenancy. One of those requirements is that the notice must be signed by the person giving the notice.
9. Further, all of the allegations set out in the second N5 are alleged to have occurred during the seven-day remedy period of the first N5 notice, or earlier. A second N5 notice is given under section 68 of the Act, and may only be given where a valid first N5 notice was given under section 64 of the Act, and more than seven days but less than 6 months after the first N5 was given, conduct occurs or a situation arises that would constitute grounds for

another notice under section 64 to be given. The Landlord was therefore not entitled to give the second N5 under section 68 of the Act.

10. I therefore determined that the second N5 is invalid. The Landlord elected to proceed with the L2 application based on the N8 notice of termination, and with respect to the compensation sought for undue damage caused to the rental unit or residential complex.

Determinations:

L1 Application – Non-payment of Rent

11. 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.
12. As of the hearing date, the Tenant was still in possession of the rental unit.
13. The lawful monthly rent is \$1,350.00. It is due on the 1st day of each month. The Landlord claimed that the rent had increased to \$1,383.00 as of January 1, 2023. The Tenant challenged this rent increase. The evidence before me was that the Landlord had simply emailed to the Tenant to advise him that the rent would increase. Under section 116 of the Act, a Landlord cannot increase the rent for a rental unit without first giving the tenant at least 90 days' written notice of the rent increase in a form approved by the LTB. The Landlord's email was not in the form approved by the LTB, and the rent increases is therefore void pursuant to subsection 116(4) of the Act.
14. Based on the Monthly rent, the daily rent/compensation is \$44.38. This amount is calculated as follows: $\$1,350.00 \times 12$, divided by 365 days.
15. The Tenant has not made any payments since the application was filed.
16. The Tenant said that he believed the Landlord owed him money for some repair work he had done around the rental unit property. His evidence was that at the start of the tenancy, the landlord told him to keep track of the hours he spent working on the rental unit property, and that it would be deducted from the rent. The Tenant gave evidence of a text message from the Landlord at the beginning of the tenancy in March 2021 about cleaning up the backyard. In it, the Landlord said to keep track of the hours spent and to either bill her, or it could be deducted from the rent.
17. The Landlord said that the Tenant did some repair work in the upstairs bathroom after moving in. She said that the Tenant asked if he could do the work, the parties discussed it, the Tenant provided a quote, and the Landlord deducted that amount from the rent. She said there was no ongoing arrangement where the Tenant would conduct repairs or maintenance and the Tenant could simply keep track of his hours and have the amount credited against the rent.
18. I do not find that there was an ongoing arrangement where the Landlord agreed that the Tenant could conduct work, track his hours and deduct the value of that time from the rent owing. There was no reliable evidence of any such ongoing agreement, nor was there

evidence of what the agreed upon hourly rate would be, or how many hours the Tenant spent and how much money he believes ought to have been deducted from the rent.

19. The rent arrears owing to May 31, 2023 are \$18,900.00.
20. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
21. The Landlord collected a rent deposit of \$1,350.00 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.
22. Interest on the rent deposit, in the amount of \$42.44 is owing to the Tenant for the period from February 25, 2022 to May 29, 2023.

L2 Application – Persistent Late Payment of Rent

23. On May 31, 2022, the Landlord gave the Tenant an N8 notice of termination of tenancy, alleging that the Tenant had persistently failed to pay his rent by the date it was due.
24. The Tenant has persistently failed to pay the rent on the date it was due. The rent is due on the first day of each month. The rent was paid late in each of the 11 months from July 2021 to May 2022, as set out in the N8 notice.
25. The Tenant has not paid any rent to the Landlord since May 2022. The Tenant has therefore failed to pay his rent by the day it is due for every month from July 2021 to May 2023.

L2 Application – Claim for Compensation

26. The Landlord claimed that there was damage to the interior of the rental unit, including holes in the drywall, as well as damage to the backyard, trees, landscaping and deck. The Landlord claimed a total of \$4,580.00.
27. The Landlord submitted photographs of the damage to the interior of the rental unit. These photos disclosed holes in the drywall in several areas of the home, some damaged trim, and a missing cap from a newel post. The Landlord said that some of this damage had been repaired by the Tenant, but not all of it.
28. The Landlord submitted photographs of the backyard from around 2014-2015 for the purpose of comparing it to a photograph taken in May 2022. The 2014-2015 photo showed a grass and dirt yard. The May 2022 photo shows that the yard is full of gravel. She said that the Tenant dumped gravel in the yard without her permission, and this increased the grade of the yard by 4-6 inches.
29. The Landlord did not present any documentary evidence of the cost to repair any of the damage alleged in the application. There was no estimate of the cost to return the backyard to its previous state, nor was there specific evidence of the cost to repair any outstanding issues inside the rental unit that the Tenant did not already repair. The costs claimed were only based on what she believed it would cost to repair everything.

30. The Tenant's evidence was that he had an agreement to clean up the yard, and views his efforts to be improvements and not damage. He acknowledged that he brought four loads of gravel into the backyard, and said he did this to address a drainage issue in the yard and make it usable.
31. The Landlord's claim for compensation on the L2 application is dismissed. Section 89 of the Act permits a Landlord to apply to the Board to recover reasonable costs that the landlord has incurred or will incur for the repair of or, where repairing is not reasonable, the replacement of damaged property. There was inadequate evidence to be able to determine the reasonable cost to repair or replace any of the property the Landlord alleged to have been damaged.

Section 83

32. The Landlord sought a "speedy" eviction so that she could rent the rental unit to someone who will pay the rent. She said she is a small landlord and this is an investment property. She said she has to pay the mortgage, and the interest rate has increased substantially. She said that the Tenant's non-payment of rent has caused her significant financial difficulty, and that she has had to sell another property to cover her expenses.
33. The Tenant said that he was laid off and fell behind in paying his rent, but that he did his best to pay rent when he could. He said that if the tenancy is terminated, he would need at least 2 months to find new living accommodation.
34. 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 September 15, 2023 pursuant to subsection 83(1)(b) of the Act. The purpose of this delay is to afford the Tenant a reasonable amount of time to find other living accommodation.

It is ordered that:

1. Pursuant to the L2 Application, the tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before September 15, 2023.
2. The Tenant shall pay to the Landlord **\$17,630.58**. 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.
3. The Tenant shall also pay the Landlord compensation of \$44.38 per day for the use of the unit starting May 30, 2023 until the date the Tenant moves out of the unit.
4. If the Tenant does not pay the Landlord the full amount owing on or before September 15, 2023, the Tenant will start to owe interest. This will be simple interest calculated from September 16, 2023 at 6.00% annually on the balance outstanding.
5. If the unit is not vacated on or before September 15, 2023, then starting September 16, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

6. 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 September 16, 2023.

August 2, 2023
Date Issued

Mark Melchers
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 March 16, 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 the Landlord

Rent Owing To Hearing Date	\$18,337.02
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	- \$1,350.00
Less the amount of the interest on the last month's rent deposit	- \$42.44
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	\$17,630.58
Plus daily compensation owing for each day of occupation starting May 30, 2023	\$44.38 (per day)