



Order under Section 69 Residential Tenancies Act, 2006

Citation: Galaxy Value Add Ontario Properties LP v Allain, 2023 ONLTB 74436

Date: 2023-11-14

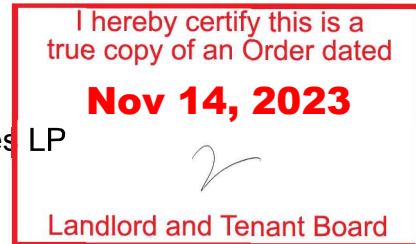
File Number: LTB-L-062853-22

In the matter of: 103, 100 RIDEAU ST
OSHAWA ON L1J6P5

Between: Galaxy Value Add Ontario Properties LP

And

Genevieve Allain



Landlord

Tenant

Galaxy Value Add Ontario Properties LP (the 'Landlord') applied for an order to terminate the tenancy and evict Genevieve Allain (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on November 2, 2023.

The Landlord's Legal Representative, S. McArthur, and the Tenant attended the hearing.

Determinations:

1. 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.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. There was no dispute that lawful rent is \$2,237.58 which includes a second parking spot. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$73.56. This amount is calculated as follows: \$2,237.58 x 12, divided by 365 days.
5. The Tenant has paid \$16,134.88 to the Landlord since the application was filed.
6. The Tenant did not dispute that the rent arrears owing to November 30, 2023 are \$15,015.90.
7. The Tenant initially stated that she believed the rent arrears were less and were a result of a dispute in August 2022. However, she acknowledged that no rent was paid in July, August, September and November 2023. Then she stated she agrees with the Landlord's calculation of the arrears and the amount owing of \$15,015.90.

8. The Tenant also stated that she has been having issues using the Landlord's App to pay the rent. As a result of this, she has attempted to pay using money orders in the past however the office staff continue to direct her to use the App. At the hearing, the Landlord's Legal Representative confirmed that the Landlord will accept payments in the form of a money order or cheque if a tenant cannot use the App.

NSF Charges and Bank Fees

9. At the hearing, the Landlord requested \$300.00, being \$200.00 for administration charges and \$100.00 for bank fees, related to 10 pre-authorized payments (November 2022, January 2023, March 2023, May 2023(2) to October 2023) for the Tenant's rent which were returned NSF.
10. Subsection 87(5) of the *Residential Tenancies Act, 2006* ("Act") states the following:

On an application by a landlord under this section, the Board may include the following amounts in determining the total amount owing to a landlord by a tenant or former tenant in respect of a rental unit:

1. The amount of NSF cheque charges claimed by the landlord and charged by financial institutions in respect of cheques tendered to the landlord by or on behalf of the tenant or former tenant, to the extent the landlord has not been reimbursed for the charges.
 2. The amount of unpaid administration charges in respect of the NSF cheques, if claimed by the landlord, that do not exceed the amount per cheque that is prescribed as a specified payment exempt from the operation of section 134.
11. Based on the evidence before me, I find that the Landlord is not entitled to administration charges as claimed. Pursuant to subsection 87(5) of the Act, the Board may include in an order an amount for administration charges related to cheques tendered to the Landlord by the Tenant. The Tenant did not tender cheques to the Landlord, this claim is related to pre-authorized payments.
 12. The Landlord's Legal Representative did not provide any evidence that the Landlord was charged bank fees of \$10.00 for each of these NSF pre-authorized payments. Therefore, I find that the Landlord is not entitled to these NSF bank fees as claimed.
 13. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
 14. The Landlord collected a rent deposit of \$2,080.00 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.
 15. Interest on the rent deposit, in the amount of \$112.15 is owing to the Tenant for the period from March 1, 2021 to November 2, 2023.

Section 82 Issues

16. The Tenant alleges that the Landlord is in breach of their obligations under the Act and requested remedies for these alleged breaches.
17. Based on the evidence and submissions made at the hearing, I was not satisfied that the Tenant provided written notice of these issues and supporting evidence at least seven days in advance of the hearing date as required by subsection 82(2) of the Act and Board Rule of Procedure 19.4. The Tenant also did not provide a reasonable explanation as to why she could not have complied with these requirements. Therefore, the Tenant's section 82 claims cannot be considered by the Board.
18. The Tenant stated that the Landlord is aware of these issues and that they were sent in an email to the LTB after the last hearing. The Tenant's email to the LTB was dated April 27, 2023 and had four attachments all related to the rent arrears. In the body of the email the Tenant wrote about these issues. The Tenant acknowledged that she did not send anything to the Landlord this time around because she didn't know she had to let them know again.
19. The Landlord's Legal Representative submitted that there are no issues on file from the Tenant. However, she was notified that the Tenant's stove was replaced in April 2023.
20. The Notice of Hearing Package, which the Tenant did not dispute receiving, sets out the requirements for the parties to disclose any evidence to the other party as soon as possible but at least 7 days before the hearing. The Tenant's Notice of Hearing package also included a form titled "Issues a Tenant intends to Raise at a Rent Arrears Hearing." The preamble on this form contains the following statement:

A tenant who fails to provide the landlord and the Board with a written description of each issue will not be permitted to raise them at the hearing unless the Board Member is satisfied that the tenant could not comply with the requirements.
21. Based on the evidence before me, I am satisfied that the Tenant could have served the Landlord via email or in person with the disclosure of her issues as required by section 82 of the Act. Having failed to make reasonable efforts to make the Landlord aware of her intention to raise these issues pursuant to section 82 of the Act, I find it would be unfair to the Landlord to allow the Tenant to proceed with these issues given the lack of notice.

Relief From Eviction

22. 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 not be unfair to postpone the eviction until December 31, 2023 pursuant to subsection 83(1)(b) of the Act.
23. The Landlord's Legal Representative submitted that at present there appears to be no other income for the Tenant other than CTC and that the Landlord is not agreeable to a five year repayment plan. She submitted that the Landlord is willing to extend the eviction to December 31, 2023 to allow the Tenant an opportunity to pay these arrears or find another unit.

24. The Tenant has resided in the unit since 2021 with her husband and five children. Her husband was laid off in mid-September and most likely won't return to work until next spring and has only recently applied for EI benefits. She is currently a stay-at-home mom as two of her children are not in school as of yet. Given her current income, the Tenant proposed paying the monthly rent plus an additional \$200.00 on the 20th of each month. She stated that this additional payment can increase to \$500.00 once her husband's EI is received. She stated that she never had issues with her rent before and would like to stay and will pay the arrears.
25. The rent arrears currently outstanding are \$15,015.90, this is a significant increase since the application was filed seeking rent arrears of \$2,377.96. The Tenant has not demonstrated that the accruing monthly rent can be paid on time and in full given her current income. Therefore, in these circumstances I find that ordering a repayment plan is not fair to the Landlord. Given that the Landlord is willing and is holding a last months' rent deposit, I find that it is fair to delay the eviction until December 31, 2023.

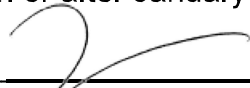
It is ordered that:

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:**
 - \$15,201.90 if the payment is made on or before November 30, 2023. See Schedule 1 for the calculation of the amount owing.
- OR**
- \$17,439.48 if the payment is made on or before December 31, 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 December 31, 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 December 31, 2023**
 5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$10,919.29. 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 \$73.56 per day for the use of the unit starting November 3, 2023 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 November 25, 2023, the Tenant will start to owe interest. This will be simple interest calculated from November 26, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 31, 2023, then starting January 1, 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 January 1, 2024.

November 14, 2023

Date Issued



Lisa Del Vecchio
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 July 1, 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 November 30, 2023

Rent Owing To November 30, 2023	\$31,150.78
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$16,134.88
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	\$15,201.90

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before December 31, 2023

Rent Owing To December 31, 2023	\$33,388.36
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$16,134.88
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	\$17,439.48

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

Rent Owing To Hearing Date	\$29,060.32
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$16,134.88
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	- \$2,080.00
Less the amount of the interest on the last month's rent deposit	- \$112.15
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	\$10,919.29
Plus daily compensation owing for each day of occupation starting November 3, 2023	\$73.56 (per day)