



Order under Section 69 Residential Tenancies Act, 2006

Citation: Negi v Phillips, 2023 ONLTB 60063

Date: 2023-09-07

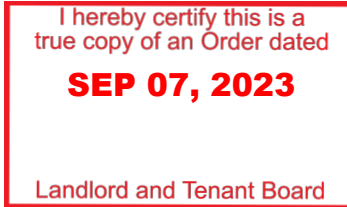
File Number: LTB-L-071027-22

In the matter of: G-002, 70 ORCHID PLACE DR.
SCARBOROUGH ON M1B2W1

Between: Hemlata Negi
Padmender Negi

And

Sandy Phillips



Landlords

Tenant

Hemlata Negi and Padmender Negi (the 'Landlords') applied for an order to terminate the tenancy and evict Sandy Phillips (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on August 23, 2023. The Landlord Hemlata Negi attended the hearing and was represented by T. Sivapatham, paralegal. The Tenant attended the hearing and was self-represented. The Tenant spoke with duty counsel prior to the hearing.

Determinations:

Section 82:

1. The Tenant filed evidence prior to the hearing to support maintenance concerns pursuant to section 82 of the *Residential Tenancies Act, 2006* (the Act). The Tenant intended to rely on her section 82 claims at the hearing.

2. Section 82 of the Act states:

Tenant issues

82 (1) At a hearing of an application by a landlord under section 69 for an order terminating a tenancy and evicting a tenant based on a notice of termination under section 59, the Board shall permit the tenant to raise any issue that could be the subject of an application made by the tenant under this Act if the tenant,

- (a) complies with the requirements set out in subsection (2); or
- (b) provides an explanation satisfactory to the Board explaining why the tenant could not comply with the requirements set out in subsection (2).

3. The matter was previously before the Board on May 10, 2023 and was adjourned due to a scheduling overflow. At that the hearing, the Tenant advised the presiding Member that

she intended to raise concerns pursuant to section 82 of the Act. The Tenant also advised the presiding Member that she intended to dispute the lawful monthly rent charged.

4. On May 24, 2023, the Member who presided over the May 10, 2023 hearing issued interim order LTB-L-071027-22-IN. The interim order required the Tenant to not only disclose her section 82 evidence to the Board and to the Landlord, but to also pay \$2,350.00 on or before the first day of each month commencing June 1, 2023 and continuing until the matter returned to a hearing. Paragraph 4 of the interim order states that failure to comply with the terms of the order would result in the Tenant's section 82 evidence not being accepted at the next hearing.
5. At the hearing, the Tenant confirmed that she made no payments since the matter was adjourned or pursuant to the interim order issued. As such, I denied the Tenant the right to raise her maintenance concerns pursuant to section 82 of the Act.
6. The interim order issued was clear about the consequences of non-compliance and the Tenant provided no reasonable explanation as to why she did not comply with the Board's interim order. As such, the matter proceeded to be heard on the merits of the non-payment of rent only.

Non-payment:

7. The Landlord's L1 application was amended on August 10, 2023 to reflect the correct amount of arrears owing to November 30, 2022.
8. 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.
9. As of the hearing date, the Tenant was still in possession of the rental unit.
10. The lawful rent is \$3,200.00 effective March 1, 2023. It is due on the 1st day of each month.
11. The rent increased from \$2,400.00 to \$3,200.00 on March 1, 2023. The Landlords served the Tenant with a N2 notice of rent increase on November 23, 2022. The rental unit is exempt from the guideline rent increase limit as the rental unit was not previously occupied for residential purposes on or before November 15, 2018, pursuant to section 6.1(2) of the Act.
12. Based on the Monthly rent, the daily rent/compensation is \$105.21. This amount is calculated as follows: $\$3,200.00 \times 12$, divided by 365 days.
13. The Tenant has not made any payments since the application was filed.
14. The rent arrears owing to August 31, 2023 are \$27,050.00.
15. The Landlords incurred costs of \$186.00 for filing the application and are entitled to reimbursement of those costs.

16. The Landlords collected a rent deposit of \$2,350.00 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.
17. Interest on the rent deposit, in the amount of \$115.28 is owing to the Tenant for the period from March 1, 2021 to August 23, 2023.

Relief from eviction:

18. 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 30, 2023 pursuant to subsection 83(1)(b) of the Act.
19. The arrears of rent are substantial, and the Tenant has made no payments since the application was filed. At the hearing, the Tenant stated that she is currently a student and could not afford the current monthly rent. The Tenant resides in the rental unit with her 3 children.
20. Based on the evidence before me, I find that it would not be unfair to delay termination to September 30, 2023 to allow the Tenant some additional time to secure alternate housing. I find that any extension beyond this would be prejudicial to the Landlords as the Tenant is not in a position to repay the arrears, let alone the ongoing monthly rent.

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:**
 - \$30,436.00 if the payment is made on or before September 30, 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 September 30, 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 September 30, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlords \$23,990.55. 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 owe on the rent deposit is 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 \$105.21 per day for the use of the unit starting August 24, 2023 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 September 18, 2023, the Tenant will start to owe interest. This will be simple interest calculated from September 19, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before September 30, 2023, then starting October 1, 2023, 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 October 1, 2023.

September 7, 2023
Date Issued



Fabio Quattrociochi
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 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 September 30, 2023

Rent Owing To September 30, 2023	\$30,250.00
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 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	\$30,436.00

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

Rent Owing To Hearing Date	\$26,269.83
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	- \$2,350.00
Less the amount of the interest on the last month's rent deposit	- \$115.28
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	\$23,990.55
Plus daily compensation owing for each day of occupation starting August 24, 2023	\$105.21 (per day)