



Order under Section 69 Residential Tenancies Act, 2006

Citation: STERLING SILVER DEVELOPMENT CORPORATION v Van Den Boom, 2024 ONLTB 4524

Date: 2024-01-25

File Number: LTB-L-079868-23

In the matter of: 1106, 323 RUSHOLME RD
TORONTO ON M6H2Z2

Between: STERLING SILVER DEVELOPMENT CORPORATION Landlord

and

Rachel Van Den Boom Tenant

STERLING SILVER DEVELOPMENT CORPORATION (the 'Landlord') applied for an order to terminate the tenancy and evict Rachel Van den boom (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlord also claimed charges related to NSF cheques.

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

Only the Landlord's Legal Representative, Sharon Harris, attended the hearing.

As of 9:31 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:

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. The lawful rent is \$1,809.78. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$59.50. This amount is calculated as follows: \$1,809.78 x 12, divided by 365 days.
5. The L1/L9 Update information sheet contained information about payments made before the application was filed and indicated an earlier payment had since been returned NSF. As a result, the Landlord's Application was amended to reflect an additional \$1,220.00 in

payments made on October 5 and 7, 2023 and to remove the \$700.00 payment previously attributed to the Tenant.

6. The Tenant has paid \$3,810.00 to the Landlord since the application was filed.
7. The rent arrears owing to January 31, 2024, are \$3,288.46.
8. The Landlord also claimed \$60.00 to reimburse the Landlord for administration charges and \$15.00 for bank fees the Landlord incurred as a result of 3 cheques given by or on behalf of the Tenant which was returned NSF. However, at the hearing the Landlord's Legal Representative confirmed the charges claimed by the Landlord related to Electronic Funds Transfer ('EFTs') and not NSF cheques.
9. As the funds were not received via cheque, the request for the bank charges was withdrawn. We also note that there was no evidence provided that substantiated these fees.
10. Sub-section 87(5) of the *Residential Tenancies Act, 2006* (the 'Act'), and section 17 of O.Reg 516/06 refer to payment of an administration charge for NSF cheques and do not provide for a remedy for administration charges for EFTs that fail due to insufficient funds. The Landlord's Legal Representative submitted there is variable practice before the Board in awarding administration charges for EFTs and noted the Landlord still has to administer the non-payment but declined to make submissions on why the reference to 'cheque' in ss. 87(5) of the Act and s. 17 of O.Reg 516/06 should be interpreted to include an 'EFT'. In the above circumstances where the payments were EFTs and not cheques, we find these charges are not available based on a plain reading of the Act, and they are not awarded.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. The Landlord collected a rent deposit of \$1,765.79 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.
13. Interest on the rent deposit, in the amount of \$45.35 is owing to the Tenant for the period from January 1, 2023, to January 10, 2024.
14. We have considered all of the disclosed circumstances in accordance with subsection 83(2) of 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 the Landlord did attempt to negotiate repayment of the arrears of rent. In making this finding we considered the Landlord's Legal Representatives uncontested evidence that the Landlord sent numerous letters to the Tenant asking them to contact the property manager to discuss a payment plan and the Tenant did not respond.
15. As the Tenant did not attend and no other circumstances were presented to us, we 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 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:**
 - \$3,474.46 if the payment is made on or before January 31, 2024. See Schedule 1 for the calculation of the amount owing.

OR

 - \$5,284.24 if the payment is made on or before February 5, 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 February 5, 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 February 5, 2024**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$448.54. 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 \$59.50 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 Landlord the full amount owing on or before February 5, 2024, the Tenant will start to owe interest. This will be simple interest calculated from February 6, 2024, at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before February 5, 2024, then starting February 6, 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 February 6, 2024.

January 25, 2024
Date Issued

Rebecca Case
Vice Chair, Landlord and Tenant Board

Reid Jackson
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 August 6, 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 January 31, 2024

Rent Owing To January 31, 2024	\$7,098.46
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,810.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Total the Tenant must pay to continue the tenancy	\$3,474.46

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before February 5, 2024

Rent Owing To February 29, 2024	\$8,908.24
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,810.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Total the Tenant must pay to continue the tenancy	\$5,284.24

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

Rent Owing To Hearing Date	\$5,883.68
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,810.00
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	- \$1,765.79
Less the amount of the interest on the last month's rent deposit	- \$45.35
Total amount owing to the Landlord	\$448.54
Plus daily compensation owing for each day of occupation starting January 11, 2024	\$59.50 (per day)