



Order under Section 69 Residential Tenancies Act, 2006

Citation: St. Marks (Don Mills) Non-Profit Housing v Gaskin, 2024 ONLTB 16008

Date: 2024-03-04

File Number: LTB-L-036751-22

In the matter of: 308, 7 THE DONWAY E
TORONTO ON M3C3P8

Between: St. Marks (Don Mills) Non -Profit Housing Landlord

And

Gennine Gaskin Tenant

St. Marks (Don Mills) Non-Profit Housing (the 'Landlord') applied for an order to terminate the tenancy and evict Gennine Gaskin (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 15, 2024.

The Landlord's Representative Jeff Paine and Property Manager Derek Brovold 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. The lawful rent is \$189.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$6.21. This amount is calculated as follows: \$189.00 x 12, divided by 365 days.
5. The Tenant has paid \$2,624.75 to the Landlord since the application was filed.
6. The rent arrears owing to January 31, 2024 are \$5,140.07.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

S. 82 Issues Raised

8. The Tenant raised s. 82 issues.
9. She claimed that the Landlord was in breach of s. 22 of the *Residential Tenancies Act, 2006*, (“the Act”): “A landlord shall not at any time during a tenant’s occupancy of a rental unit and before the day on which an order evicting the tenant is executed substantially interfere with the reasonable enjoyment of the rental unit or the residential complex in which it is located for all usual purposes by a tenant or members of his or her household.”
10. The Tenant claimed that there was second hand smoke from marijuana smoking in the unit.
11. She claimed that someone named Randy was harassing her. She claimed that there was an accommodation in the building that access workers would not use the laundry facility because their products made her sick. So they were not supposed to do laundry there. But Randy kept doing it. The Tenant claims she got very ill as a result.
12. The Tenant claimed she got sick and lost everything.
13. She claims she has PTSD.
14. She had to go to specialists all the time.
15. She claims that the Landlord did not take action, because the people who were smoking had a history of guns. The previous manager said he did not want to deal with the marijuana issue, because he was afraid of the people with the guns.
16. She asked the Landlord to help her, but he did nothing. This went on for years, she alleged.
17. She claims that there was an agreement that the building be a non smoking one.
18. The Tenant filed evidence.
19. At Appendix B of her evidence, she claimed that the failure to enforce the non smoking policy the building, arose as an issue in 2018.
20. The laundry room issue also arose in 2018.
21. In fact, all of the many issues she raised, took place between 2018 – 2021.
22. She raised the issue of the front office not having paper work in her Appendix B, dating from 2022, but did not raise it at the hearing.
23. She filed her s. 82 application on February 7, 2023.
24. I find that all the issues she has raised in her Appendix B, pages 141 – 156, with the exception of one, are statute barred, because they were not brought within one year of the alleged breach, as required under s. 29(2) of the Act.
25. She raised the issue of windows in the laundry room, dating from August 2023. Her concern was that odours from the laundry room were seeping out of the laundry room into her unit.
26. At this stage of the evidence, the Tenant became hysterical.

27. She started to yell and scream.
28. She completely lost control and used vulgar language. She went into a tirade of abusive language and made threats such as "*I am going to get you Derek*".
29. She was asked to calm down and settle down.
30. This went on for a couple of minutes and she had to be muted to re-take control of the hearing. She did not participate in the hearing after that.
31. I note from an Interim Order in these proceedings, that the Tenant was encouraged to have a support person present. She was also encouraged to take legal advice.
32. She did neither.
33. As to this issue of the odours from the laundry room, the Landlord testified that "*we do have doors and fans to ensure odours go back to the laundry room. So this is an issue of her imagination.*"
34. Moreover, the Tenant wrongfully removed the windows from the laundry room.
35. The windows that she removed have not yet been re-installed. They have been ordered. The Landlord stated that "*I believe she removed them in November 2023.*"
36. I am satisfied, based on the Landlord's uncontested evidence, that this is an issue of the Tenant's imagination (the scents from the laundry room), and not a true issue in the building.
37. As a result, I find that none of the s. 82 issues raised are actionable at this late date.

Relief from Eviction

38. 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 be fair to grant relief from eviction pursuant to subsection 83(1)(b) of the Act.
39. The Landlord attempted a payment plan with the Tenant on multiple occasions.
40. The Landlord was not aware of any reason to grant relief from eviction.
41. The Landlord's uncontested evidence, in response to the issues raised by the Tenant, was as follows.
42. The older leases do not have non-smoking clauses. The Landlord has followed up with people on the third floor, regarding marijuana and the laundry products. "*We have told them about her sensitivity to the issues. We have told them not to smoke in the units, but on their balconies.*"
43. The Landlord continued "*I believe she is raising a few isolated issues here, where students were smoking. We told people to use non-scented products. We bought commercial machines in the laundry room, spending some \$5000 so support workers can do their*

laundry on the first floor, not the third. I believe she had an issue with them. We put an air purifier in her unit. That was October 2021."

44. The Landlord testified: "*We have found students smoking the in stair well. We deal with it when it comes up.*" "*We have put a lot of effort to do out best to accommodate her sensitivities. There was an acknowledgement that things have improved.* (ie the Tenant Testified that things have been better in the past 4 months or so). *I do not think it is possible to eradicate all these issues. We tried to make it so she can live problem free. I have advised, if she does not feel safe, leave building and report the incident. I have not had cooperation from her on this. I had reports after the fact. It has been difficult to try to deal with this.*"
45. The Landlord also testified that: "*I have never been concerned for my safety in terms of guns on the property. We are a small non for profit. Safety is not a concern in the building.*"
46. On balance, I find that the Landlord has made many efforts to accommodate the Tenant's issues, up to the point of undue hardship. The Tenant's own evidence was that things have improved, and that there are only isolated incidents at this stage.
47. The Landlord was seeking a standard order, but was willing to offer the Tenant 5 months to move, which I will order, as relief from eviction.

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:**
 - **\$6,649.07** if the payment is made on or before August 31, 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 August 31, 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 August 31, 2024**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord **\$4,290.03**. 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 \$6.21 per day for the use of the unit starting January 16, 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 August 31, 2024, the Tenant will start to owe interest. This will be simple interest calculated from September 1, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before August 31, 2024, then starting September 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 September 1, 2024.

March 4, 2024

Date Issued

James Campbell
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 1, 2025 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 August 31, 2024

Rent Owing To August 31, 2024	\$9,087.82
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,624.75
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	\$6,649.07

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

Rent Owing To Hearing Date	\$7,668.97
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,624.75
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	- \$939.23
Less the amount of the interest on the last month's rent deposit	- \$0.96
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	\$4,290.03
Plus daily compensation owing for each day of occupation starting January 16, 2024	\$6.21 (per day)