



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: Casale v Connell, 2024 ONLTB 4479

Date: 2024-01-17

File Number: LTB-L-023375-23

In the matter of: 1, 445 BARTON ST E
HAMILTON ON L8L2Y7

Between: Tony Casale Landlord
Rose Casale

And

Amanda Connell Tenant
Timothy O'connor

Tony Casale and Rose Casale (the 'Landlord') applied for an order to terminate the tenancy and evict Amanda Connell and Timothy O'connor (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant; (L2)
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises. (L2)
- Tenant did not pay the rent that the Tenant owes. (L1)

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

The Landlords and the Tenant, A. Connell attended the hearing.

Determinations:

L2 Application

1. The Tenant was in possession of the rental unit on the date the application was filed.

2. On January 2, 2023, the Landlord gave the Tenants an N5 notice of termination with a termination date of January 25, 2023. The notice of termination alleges the following:
 - December 1st 2022 at 3:00pm, Pull station was pulled, fire department was called and attended. Advised that there is a fire hazard due to hoarding and blocking emergency exits.
 - December 16, 2023, super heard fighting, swearing and banging. He went to the unit and discovered that someone from the inside through a ceramic pot out of the window. A second window was also broken on the same day.
3. The Landlord was allowed to give the Tenant a second, non voidable notice of termination under section 68 of the *Residential Tenancies Act, 2006* (the 'Act').
4. On March 1, 2023, the Landlord gave the Tenants a second N5 notice of termination with a termination date of March 16, 2023. The notice of termination contains the following allegations:
 - February 14, 2023 – Tenants flooded both kitchen and bathroom sink, water overflowed onto the floor and into the basement and got into the boiler and furnace. The pilot light went out and the Tenants had no heat and hot water for the day. This was an emergency, and they did not allow the super in to fix the problem.
 - February 16, 2023- The Hoarding and blocking of emergency exits has not been resolved, windows have not been fixed.
 - Feb 2023 -All month- drug deals and fighting and yelling and people in and out at all hours of the day and night.
5. At the hearing, the parties were advised that the third allegation on the 2nd N5 notice of termination does not include enough particulars, such as dates and times and details of specific incidents and therefore, I would not be considering it. I also am not considering the incident on February 16, 2023 as this was included on the 1st N5 notice of termination. This is not a new allegation The purpose of a second N5 notice is to include a further contravention of the Act. This means additional contravention. In this case, the Landlord listed the same behaviour on both notices. As a result, the only allegation properly before me is the alleged flooding on February 14, 2023.
6. The Landlord testified that he received a call form the building super intendent on February 14, 2023, that there was water coming into the basement, and that it had reached the boiler and the furnace. As a result, the pilot light went out. The water was coming from the Tenant's unit above. He testified that the Tenant's would not allow entry to the super so that the issue with the water could be rectified. He testified that they knocked on the front door and the back door and the Tenants didn't answer the door. He testified that they were home because he heard voices inside the unit, and he was saying "please let us in, this is an emergency".

7. The Tenant testified that the flooding that occurred originated from under her bathroom sink as a result of the PVC piping coming loose. The Tenant was not aware that there was an issue with the piping until the flood happened. She testified that the super just had to tighten it and it was fixed.
8. The Tenant was confused about the dates that the flood occurred as she testified that she was in the hospital for 2 days from February 16 to February 18 and no one was at the unit to let the Landlord in. She testified that she was told by her partner that the Landlord entered on February 17, 2023 to fix the PVC pipe under the bathroom sink.

Analysis

9. Section 68 of the Act says:

Notice of termination, further contravention

68 (1) A landlord may give a tenant notice of termination of the tenancy if,

- (a) a notice of termination was given to the tenant under section 62, 64 or 67; and
- (b) more than seven days but less than six months after the notice mentioned in clause (a) was given to the tenant, an activity takes place, conduct occurs or a situation arises that constitutes grounds for a notice of termination under section 60, 61, 62, 64 or 67, other than an activity, conduct or a situation that is described in subsection 61 (1) and that involves an illegal act, trade, business or occupation described in clause 61 (2) (a).
2006, c. 17, s. 68 (1); 2017, c. 13, s. 12.

10. The Landlord served the second N5 notice of termination because of allegations relating to a flood that substantially interfered with the Landlord or other Tenant's reasonable enjoyment of the unit and was caused by the wilful or negligent behaviour of the Tenant.
11. I find that there is insufficient evidence lead by the Landlord to establish that the flood was caused by the Tenant's wilful or negligent behaviour. It seems more likely than not that the flood was caused by a loose or damaged pipe and that the Tenant was not aware of the issue. For this reason, the Landlord's L2 application is dismissed.

L1 application

12. 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.
13. As of the hearing date, the Tenant was still in possession of the rental unit.
14. The lawful rent is \$1,600.00. It is due on the 1st day of each month.

15. Based on the Monthly rent, the daily rent/compensation is \$52.60. This amount is calculated as follows: $\$1,600.00 \times 12$, divided by 365 days.
16. The Tenant has paid \$6,028.00 to the Landlord since the application was filed.
17. The rent arrears owing to November 30, 2023 are \$7,397.00.
18. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
19. The Landlord collected a rent deposit of \$1,600.00 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.
20. Interest on the rent deposit, in the amount of \$74.96 is owing to the Tenant for the period from January 15, 2022 to November 29, 2023.

Relief from eviction

21. The Tenant testified that she lives in the unit with her partner. She testified that her partner deals with a lot of health issues. She testified that the other Tenant's benefits were cut off in approximately March 2023 and were reinstated in May 2023.
22. The Tenant suggested a payment plan that at the time of the hearing, would see the arrears paid off in approximately 13 months by paying \$600.00 towards the arrears until paid in full.
23. The Landlord requested a standard order and testified that the Tenant's continued non payment of rent causes a financial strain on the Landlord.
24. Based on the circumstances, I do not find that the payment plan suggested by the Tenant is reasonable. Although it appears that it may be affordable based on the testimony she provided regarding her monthly income versus her expense, it would seem that that is not the case. I say this because although she has been making payments towards the rent, they are far below the actual rent. If the Tenants income supports the full rent plus an additional \$600.00 every month, it is difficult to reconcile why she hasn't paid rent in full since March 2023. In consideration of the Tenant's circumstances, It is reasonable in the circumstances to delay the termination until March 31, 2024 in order to afford the Tenant an opportunity to pay the amount owing, or to vacate the unit.
25. 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 March 31, 2024 pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

L2 Application

1. The Landlord's L2 application is dismissed.

L1 Application

2. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
3. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$12,383.00 if the payment is made on or before February 29, 2024. See Schedule 1 for the calculation of the amount owing.

OR

 - \$13,983.00 if the payment is made on or before March 31, 2024. See Schedule 1 for the calculation of the amount owing.
4. 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 March 31, 2024 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
5. **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 March 31, 2024**
6. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$5,833.44. 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.
7. The Tenant shall also pay the Landlord compensation of \$52.60 per day for the use of the unit starting November 30, 2023 until the date the Tenant moves out of the unit.
8. If the Tenant does not pay the Landlord the full amount owing on or before February 25, 2024, the Tenant will start to owe interest. This will be simple interest calculated from February 26, 2024 at 7.00% annually on the balance outstanding.
9. If the unit is not vacated on or before March 31, 2024, then starting April 1, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. 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 April 1, 2024.

February 14, 2024

Date Issued

Emily Robb

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 October 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 February 29, 2024

Rent Owing To February 29, 2024	\$18,225.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$6,028.00
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	\$12,383.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before March 31, 2024

Rent Owing To March 31, 2024	\$19,825.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$6,028.00
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	\$13,983.00

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

Rent Owing To Hearing Date	\$13,350.40
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$6,028.00
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	- \$1,600.00
Less the amount of the interest on the last month's rent deposit	- \$74.96

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	\$5,833.44
Plus daily compensation owing for each day of occupation starting November 30, 2023	\$52.60 (per day)