



Order under Section 69 Residential Tenancies Act, 2006

Citation: nbres v Gebregzibiher, 2024 ONLTB 1087

Date: 2024-01-18

File Number: LTB-L-053045-23

In the matter of: 107, 106 TALBOT ST W
LEAMINGTON ON N8H1M9

Between: nbres Landlord

And

Yemane Gebregzibiher Tenant

nbres (the 'Landlord') applied for an order to terminate the tenancy and evict Yemane Gebregzibiher (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on December 5, 2023.

The Landlord's agent, Anthony Abraham ('Abraham'), the Tenant, and the Tenant's support person, Awet Tessai ('Tessai'), attended the hearing.

Preliminary Matters:

1. The Tenant does not speak English. He speaks Tigrinya, a language spoken in Eritrea. For that reason, an official Tigrinya interpreter attended at the hearing. Unfortunately, the official interpreter's microphone was not working.
2. Fortunately, Tessai also speaks Tigrinya, and offered to interpret. There was no objection that he do so. I permitted him to interpret for the Tenant after he was affirmed to interpret faithfully.

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 Landlord testified that a fraction of the Tenant's rent is paid through the County of Essex's Housing with Supports Program (the 'Program'), and that the amounts paid by the Program vary from time to time. The Landlord put into evidence a letter from the Program, dated August 8th, 2023, explaining the amounts that it would be paying on behalf of the Tenant, and the portion of the rent which the Tenant would have to pay for himself. Also in

evidence is a copy of the letter, translated into Eritrean. The Landlord testified that this had been done by the New Canadian Centre for Excellence, to assist the Tenant in understanding his payment obligations, and that the English and Eritrean copies of the letter had been given to the Tenant.

4. The letter shows that, for the period covered by the letter, the Program would pay \$1,014.00 towards the Tenant's monthly rent, and that the Tenant would have to pay the balance, being \$846.00. The Landlord testified that over the course of the Lease, the amount that the Program pays can vary from time to time, and that as a result, the amount that the Tenant must pay varies as well.
5. The Landlord had uploaded a ledger called "Customer Open Balance". The Landlord testified that the column for "amount" represents the total amount of the monthly rental payments due from the Tenant in any particular month, and that the "Open Balance" column represents the amounts that remain unpaid by the Tenant for that particular month; i.e. the arrears.
6. The ledger shows as total of \$3,892.95 of arrears as of the December 1, 2023. The Landlord testified that it has since received \$600.00, such that the arrears owing as of the date of the hearing are \$3,292.95.
7. The Tenant, with the assistance of Tessai interpreting, testified that his agreement with the Landlord did not require him to make any contribution towards the rent, beyond the amounts paid by the Program. I asked the Tenant whether, in his view, there was any reason other than the agreement that would form the basis for his not paying rent claimed by the Landlord. He testified that there was not.
8. The Tenant did not remember specifically what he had signed by way of an agreement – i.e. a Lease – but he did recall signing something.
9. The lease had not been added to the file prior to the hearing. I asked the Landlord to file the Lease during the course of the hearing. The Landlord uploaded it to TOP. I have reviewed the document, and it appears to be a lease, signed by the Landlord and the Tenant. I find that it is the lease that is the subject of this application ('Lease').
10. Paragraph 1 of the Lease provides that:

The owner further agrees to provide the residential facilities, care services and meals herein stated, and the Resident agrees to pay to the owner the fees herein stated under the terms and conditions set out in the agreement.

11. Paragraph 3 of the Lease provides that:

The months fee for accommodation, care services and meals is called:

Basic Fee (subsidized residents) rate subject to changes based on income and subject to change based on County of Essex Housing with Supports

12. At the bottom of paragraph 3 of the Lease, there is a line which provides a blank for "Total Monthly Charges", and handwritten in that blank are the words "geared to income with County of Essex HWS".
13. I find that the Lease provides that the Tenant does have to pay a portion of the rent due for the unit from time to time. For greater certainty, I reject the Tenant's evidence that the agreement that he signed does not require him to pay a portion of the rent.

S.83

14. I asked the Tenant what he would do if I found that there was an arrears of rent owing. He testified that he might not be able to afford it. However, he provided no other evidence of his income or other sources from which he would be able to pay down any arrears or pay for the rent going forward.
15. The Landlord testified that the unit is one of many in a rest home, caring for 40 other residents with varying levels of care needs. The Tenant's failure to pay rent as it comes due, thereby depriving the Landlord of that revenue, jeopardizes the Landlord's ability to provide services for all of the people in its care.
16. 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 grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.
17. The Tenant has refused to pay his share of the rent because of his belief that the Lease does not requires him to do that. As I have found above, the Lease **does** require him to pay his share. Now that this is clear, it is for the Tenant to decide whether he wishes to do so in order to remain in the unit.

It is ordered that:

1. The Tenant shall pay to the Landlord \$3,478.95, being the arrears of rent up to December 31, 2023 and costs. The Tenant shall pay this amount to the Landlord before June 1, 2024.
2. If any amount in paragraph 1 remains unpaid on June 1, 2024, that outstanding balance shall begin to accrue interest at a rate of 7.00% per year, beginning on June 1, 2024.
3. The Tenant shall pay to the Landlord new rent on time and in full as it comes due and owing for the period February 1, 2024 to July 1, 2024.
4. If the Tenant fails to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenant to the Landlord pursuant to paragraph 1 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenant, apply to the LTB within 30 days of the Tenant's breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant and requiring that the Tenant pay any new arrears, NSF fees and related charges that became owing after January 1, 2024.

January 18, 2024

Date Issued

Jonathan Rosenstein

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.

2024 ONLTB 1087 (CanLII)