



Order under Section 69 Residential Tenancies Act, 2006

Citation: 965441 Ontario Limited v Jackman, 2024 ONLTB 22765

Date: 2024-04-10

File Number: LTB-L-084726-23

In the matter of: 63, 142 WELLESLEY ST E
TORONTO ON M4Y1J1

Between: 965441 Ontario Limited Landlord

And

William Jerrold Jackman Tenant

965441 Ontario Limited (the 'Landlord') applied for an order to terminate the tenancy and evict William Jerrold Jackman (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 19, 2024.

The Landlord's Legal Representatives, Carrie Aylwin and Elizabeth Chea, Landlord's Witness, Justin Perkell, and the Tenant attended the hearing.

Preliminary Matter:

1. The Tenant requested an adjournment so that this L1 application could be combined to be heard with the Tenant's applications LTB-T-037713-22 and LTB-T-037980-22.
2. For the reasons that follow, the request to adjourn is denied.
3. The Board's Rule 1.6(b) provides that the Board may join applications or hear applications together where it is fair to do so. I do not find it is fair in the circumstances to join the applications together.
4. First, LTB-T-037713-22 was dismissed by the Board on December 19, 2023. While the Tenant attempted to submit a request to extend time to file a request to review an order, the request was not accepted by the Board as it was incomplete.
5. Second, there are no overlapping issues or facts and no anticipated evidence in common between the Landlord's application and the Tenant's remaining application. The Landlord's application is for non-payment of rent while the Tenant's application LTB-T-037980-22 is based on maintenance issues. This is not a case in which having the matters heard separately will likely result in inconsistent findings by the Board.

6. Finally, I am of the view that granting the adjournment to allow the matters to be heard together would be significantly prejudicial the Landlord.
7. The Tenant could have had his maintenance issues dealt with at this hearing by complying with the requirements in subsection 82(2) of the *Residential Tenancies Act, 2006* (the 'Act'). The Tenant did not give the Landlord advance written notice of his intent to raise the issues at the hearing as required. The Tenant explained that he did not comply with the disclosure requirements because he assumed his applications would be heard with the Landlord's application. I do not find this explanation to be satisfactory.
8. The Tenant's request to join the applications is denied. The Tenant's request to adjourn the hearing is denied.

Determinations:

Was the N4 Notice served?

1. Justin Perkell ('JP') testified that he is employed by the Landlord as the property manager. He stated that on October 2, 2023, he and the building superintendent served the N4 notice to the Tenant by placing the notice underneath the Tenant's door.
2. The Tenant submits he never received the N4 notice of termination. He stated that there is a camera outside his rental unit that could confirm whether the notice was served. The Tenant, however, did not submit video surveillance and any other evidence in support of his position.
3. The Board only needs to be satisfied a document was deemed served, not received. Based on the evidence before me, I am satisfied the N4 notice was served to the Tenant on October 3, 2023.
4. 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.
5. As of the hearing date, the Tenant was still in possession of the rental unit.
6. The lawful rent is \$1,161.46. It is due on the 1st day of each month. The rent was changed on January 1, 2024.
7. Based on the Monthly rent, the daily rent/compensation is \$38.18. This amount is calculated as follows: $\$1,161.46 \times 12$, divided by 365 days.
8. The Tenant has not made any payments since the application was filed.
9. The rent arrears owing to March 31, 2024 are \$8,016.94.
10. The Tenant argued that he should be provided a full rent abatement due to maintenance issues. As explained above, the Tenant was not permitted to raise issued under section 82 of the Act as he failed to comply with disclosure requirements.
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 \$1,050.00 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.
13. Interest on the rent deposit, in the amount of \$5.68 is owing to the Tenant for the period from January 1, 2024 to March 19, 2024.
14. 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 May 10, 2024 pursuant to subsection 83(1)(b) of the Act.
15. The Landlord did not object to a delaying the eviction of approximately 30 days. Having considered the circumstances of the parties, I find a 30 day postponement to be reasonable and appropriate.

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:**
 - \$9,364.40 if the payment is made on or before April 30, 2024. See Schedule 1 for the calculation of the amount owing.

OR

 - \$10,525.86 if the payment is made on or before May 10, 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 May 10, 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 May 10, 2024**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$6,711.22. 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 \$38.18 per day for the use of the unit starting March 20, 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 May 10, 2024, the Tenant will start to owe interest. This will be simple interest calculated from May 11, 2024 at 7.00% annually on the balance outstanding.

8. If the unit is not vacated on or before May 10, 2024, then starting May 11, 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 May 11, 2024.

April 10, 2024
Date Issued

Justin Leung
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 November 11, 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 April 13, 2024

Rent Owing To April 30, 2024	\$9,178.40
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	\$9,364.40

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before May 10, 2024

Rent Owing To May 31, 2024	\$10,339.86
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	\$10,525.86

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

Rent Owing To Hearing Date	\$7,580.90
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	- \$1,050.00
Less the amount of the interest on the last month's rent deposit	- \$5.68

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	\$6,711.22
Plus daily compensation owing for each day of occupation starting March 20, 2024	\$38.18 (per day)

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