



Order under Section 69 Residential Tenancies Act, 2006

Citation: 75 Cosburn Apts. v Cooper, 2024 ONLTB 4700

Date: 2024-01-22

File Number: LTB-L-066592-22

In the matter of: 902-75 Cosburn Avenue Toronto, ON
M4K 2G1

Between: 75 Cosburn Apts. Landlord

And

Charmaine Cooper Tenant

75 Cosburn Apts. (the 'Landlord') applied for an order to terminate the tenancy and evict Charmaine Cooper (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 3, 2024.

The Landlord's agent Kathy Bucan and the Tenant attended the hearing. The Tenant was assisted by her daughter Katerina Liotos.

Determinations:

Preliminary Issues – s. 82 Issues

1. This matter had initially been scheduled on July 5, 2023 and had been adjourned that day due to scheduling overflow. The matter had been rescheduled to December 4, 2023 where once again, the matter was not reached.
2. I note that the previous Members had indicated on both occasions that the Tenant had intended on raising issues under s. 82 of the *Residential Tenancies Act, 2006* (the 'Act'). After the December 4, 2023 hearing date, the presiding Member that day issued a Member Endorsement ordering the Tenant to serve upon both the Board and the Landlord the following information about each issue no later than December 27, 2023.
 1. A description of the issue(s);
 2. The date the issue(s) started;
 3. The date the Tenant told the Landlord about the issue(s);
 4. Whether the issue(s) were resolved; and
 5. What the Tenant would like the LTB to order for the issue(s)
3. The Endorsement goes on to state that should the Tenant fail to comply with the deadlines as outlined and/or failed to pay ongoing rent on time and in full before the next hearing date, that the presiding Member may refuse to accept the evidence or consider the issues not disclosed.

4. On December 19, 2023, the Tenant had served a list of issues upon both the Board and the Tenant. That said, as was pointed out to the Tenant, the Tenant's list of issues did not contain any dates other than the statement that, "*the issues started the day we moved in the very first night*".
5. Further, the Tenant's list of issues had also been missing the dates in which the Tenant told the Landlord about the issues, whether the issues were resolved and what the Tenant would like the LTB to order.
6. As well, the Landlord's agent had submitted that the Tenant had failed to pay the ongoing rent in full and on time, submitting that the Tenant made two payments of \$850.00 on December 8, 2023 and December 20, 2023, totaling \$1,700.00.
7. The Tenant acknowledged the short rent payment however, the Tenant also challenged the rental increase she received for July 1, 2023, suggesting that was provided a Notice of Rent Increase Above Guideline that had not been approved by the LTB.
8. That said, the Tenant had agreed that she had received a Notice of Rent Increase and acknowledged that the Landlord had indicated that they had not been approved the increase as of yet and had only requested the permitted increased of 2.5%.
9. As such, I am satisfied that the Tenant's rent was \$1,839.88 as of July 1, 2023.
10. The Tenant further submitted that she assumed that the Landlord would have been aware of her issues as she had e-mailed evidence to the Board prior to the July 5, 2023 hearing date. That said, I note that the e-mails sent only included attached photos but no other information to confirm what the photos are, or the issues the Tenant intended to raise regarding same.
11. Further, when the Tenant was questioned about the timelines regarding the issues raised the Tenant specifically mentioned that when she moved into the unit her neighbours upstairs had been very noisy and would make noise all hours of the night. That said, the Tenant agreed that she had moved into the unit July 1, 2022 and that the offending neighbours had been evicted as of September 2022.
12. Further, the issue raised is more than one year after the day the alleged conduct giving rise to the Tenant's issues occurred, as s. 82 issues are treated in the same fashion as an application under s. 29 of the Act, the Tenant would have had to have raised those issues in accordance with s. 29(2).
13. Further, the Tenant had submitted that she was seeking a third of her rent arrears be removed based on her issues as she was unsure how to enumerate her issues for a remedy. That said, I was not satisfied that the Tenant's issued had been raised in accordance with the Member's Endorsement or the rules with respect to applications of this nature and as such, denied hearing the issues for the purposes of s. 82.

Landlord's Application

14. 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.

15. As of the hearing date, the Tenant was still in possession of the rental unit.
16. The lawful rent is \$1,839.88. It is due on the 1st day of each month.
17. Based on the Monthly rent, the daily rent/compensation is \$60.49. This amount is calculated as follows: $\$1,839.88 \times 12$, divided by 365 days.
18. The Tenant has paid \$13,250.00 to the Landlord since the application was filed.
19. The rent arrears owing to January 31, 2024 are \$16,969.16.
20. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
21. The Landlord collected a rent deposit of \$1,795.00 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.
22. Interest on the rent deposit, in the amount of \$22.99 is owing to the Tenant for the period from July 1, 2023 to January 3, 2024.

s. 83 Considerations

23. The Tenant acknowledged the arrears and testified that she had not been making enough money at work in order to cover her rent. That said, the Tenant admitted that she had withheld rent as she was also unhappy with the Landlord's response regarding her appliances, which the Tenant testified had not been working.
24. The Tenant also testified that she had made complaints to the Landlord about construction in the residential complex however, the Tenant submitted that the Landlord's agent ignored her concerns. No evidence was provided about the nature of the construction, or its length. The Tenant testified that her underground key fob had been cancelled resulting in the Tenant having to park on the street.
25. The Tenant testified that her daughter is now living with her and that their total monthly income is approximately \$4,800.00 a month. That said, the Tenant is proposing paying the rent in full and on time as well paying \$200.00 additionally every month until the arrears are paid in full.
26. The Landlord's agent disagreed with the proposed payment plan and testified that the Tenant had been negligent in her dealings with the rent bank and that the proposed payment plan would take nearly 7 years to complete.
27. Having reviewed the circumstances of the parties, I am satisfied that the Tenant can pay her rent moving forward however, the proposed payment plan is not reasonable and would be prejudicial to the Landlord if ordered.
28. As such, eviction will be ordered however, eviction will be postponed until the end of April to allow the Tenant to make arrangements with either the rent bank or to get a loan to cover the arrears. I am granting this additional time based on the evidence provided by the Tenant, namely her dealings with the Landlord regarding the key fob and her appliances, as well as the fact that she has health issues and a small dog.

29. 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 April 30, 2024 pursuant to subsection 83(1)(b) 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:**
 - \$17,155.16 if the payment is made on or before January 31, 2024. See Schedule 1 for the calculation of the amount owing.

OR

 - \$18,995.04 if the payment is made on or before February 29, 2024. See Schedule 1 for the calculation of the amount owing.

OR

 - \$20,834.92 if the payment is made on or before March 31, 2024. See Schedule 1 for the calculation of the amount owing.

OR

 - \$22,674.80 if the payment is made on or before April 30, 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 April 30, 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 April 30, 2024.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$13,678.76. 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 \$60.49 per day for the use of the unit starting January 4, 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 2, 2024, the Tenant will start to owe interest. This will be simple interest calculated from February 3, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before April 30, 2024, then starting May 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 May 1, 2024.

January 22, 2024

Date Issued

Jagger Benham
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 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.

2024 ONLTB 4700 (CanLII)

**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	\$30,219.16
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$13,250.00
Total the Tenant must pay to continue the tenancy	\$17,155.16

B. 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	\$32,059.04
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$13,250.00
Total the Tenant must pay to continue the tenancy	\$18,995.04

C. 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	\$33,898.92
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$13,250.00
Total the Tenant must pay to continue the tenancy	\$20,834.92

D. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before April 30, 2024

Rent Owing To April 30, 2024	\$35,738.80
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$13,250.00
Total the Tenant must pay to continue the tenancy	\$22,674.80

E. Amount the Tenant must pay if the tenancy is terminated:

Rent Owing To Hearing Date	\$28,560.75
Application Filing Fee	\$186.00

Less the amount the Tenant paid to the Landlord since the application was filed	- \$13,250.00
Less the amount of the last month's rent deposit	- \$1,795.00
Less the amount of the interest on the last month's rent deposit	- \$22.99
Total amount owing to the Landlord	\$13,678.76
Plus daily compensation owing for each day of occupation starting January 4, 2024	\$60.49 (per day)