



Order under Section 69 Residential Tenancies Act, 2006

Citation: Folkes v Founiapte, 2024 ONLTB 62405

Date: 2024-08-23

File Number: LTB-L-026370-24

In the matter of: 130 BIG MOE CRES
BRAMPTON ON L6P1J9

Between: Yvonne Folkes Landlord

And

Hermann Founiapte
Herman Trucking Tenant

Yvonne Folkes (the “Landlord”) applied for an order to terminate the tenancy and evict Hermann Founiapte and Herman Trucking (hereafter collectively referred to as the “Tenant”) because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on July 4, 2024.

The Landlord’s Legal Representative, Giuseppe Rizzuto, and the Tenant, Hermann Founiapte attended the hearing.

Preliminary Matters:

The Monthly Rent Charge on the Application

1. The Landlord requested to amend the application in order to reflect that the monthly rent charged to the Tenant for the months of January 2024, February 2024, and March 2024, was \$3,200.00 per month.
2. Indeed, when filing the application, the Landlord mistakenly indicated that the rent charge for the aforementioned rent periods was \$3,100.00 per month.
3. The Tenant did not oppose the amendment request, stating that their rent is indeed in the amount of \$3,200.00 and that they wanted the order related to the present application to reflect a true and accurate representation of the situation between the parties.
4. Pursuant to section 200(1) of the *Residential Tenancies Act, 2006* (Act) and Rule 15 of the Board’s *Rules of Procedure*, I granted the amendment request. Accordingly, at the time the application was filed, the arrears were in the amount of \$12,800.00.

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The Named Respondents

5. The Landlord also requested to amend the application in order to reflect that both Herman Trucking, a duly registered corporation, and Hermann Founiapte (personally) were named tenants, as it appears on a copy of the residential tenancy agreement signed by the Tenant on December 14, 2021, and countersigned by the Landlord on December 15, 2021 (Exhibit 1).
6. The Tenant did not oppose the amendment request.
7. Pursuant to section 200(1) of the Act and Rule 15 of the Board's Rules of Procedure, I granted this amendment request as well.

Determinations:

8. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (hereafter referred to as the "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.
9. As of the hearing date, the Tenant was still in possession of the rental unit.
10. The lawful rent is \$3,200.00. It is due on the 1st day of each month.
11. Based on the Monthly rent, the daily rent/compensation is \$105.21. This amount is calculated as follows: \$3,200.00 x 12, divided by 365 days.
12. The Tenant has not made any payments since the application was filed.
13. The rent arrears owing to July 31, 2024, are \$25,600.00, which the Tenant did not dispute.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. The Landlord collected a rent deposit of \$3,200.00 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.
16. Interest on the rent deposit, in the amount of \$161.80 is owing to the Tenant for the period from December 20, 2021, to July 4, 2024.

Maintenance Issues – Section 82 of the Act

17. At the hearing the Tenant sought to raise his own issues under section 82 of the Act, which could result in a rent abatement that would be set off against the arrear of rent owing to the Landlord and therefore reduce the amount the Tenant owed.
18. Pursuant to Rule 19.4 of the Board's Rules of Procedure, a tenant who intends to raise issues under sections 82(1) or 87(2) of the Act during a hearing for a landlord's application about rent arrears shall provide the other parties and the Board with the following at least seven (7) days before the scheduled hearing:
 - a written description of each issue the tenant intends to raise; and

- a copy of all documents, pictures and other evidence that the tenant intends to rely upon at the hearing.

19. The Tenant uploaded to the Tribunals Ontario Portal (hereafter referred to as "TOP") a copy of the Board's form titled "Issues a Tenant Intends to Raise at a Rent Arrears Hearing" on June 27, 2024. With that said, the Tenant indicated that they were not prepared to speak fully as to the issues that they had initially intended to raise, and that they had an appointment scheduled with a legal representative after the hearing date, to assist them in pursuing those issues and claims raised.
20. In order to not impact their ability to raise these issues, and claim the corresponding remedies, the Tenant decided that they would not be raising their issues at the hearing before me, and that they would rather wait to file their own application to have those matters heard.
21. In order to ensure that the Tenant understood the implications of not proceeding with his issues under s. 82 of the Act in the hearing, I explained to the Tenant that they would need to be mindful of the limitation periods indicated under subsection 29(2) of the Act, but as the Tenant explained the issues they intend to raise are still ongoing, the risk of their rights being extinguished is lessened.

29(2) No application may be made under subsection (1) more than one year after the day the alleged conduct giving rise to the application occurred.

Relief from Eviction

22. The Landlord sought the termination of the tenancy due to the substantial amount of the rental arrears owing. The Landlord relies on the rental payments from the Tenant in order to pay for the expenses related to the rental unit and the residential complex, including (but not limited to) the mortgage and the property taxes. To meet their obligations related to the mortgage, the Landlord testified that they have maxed out their line of credit and is therefore paying high interests amounts on those borrowed funds as well. The lack of payment from the Tenant is therefore causing a financial strain on the Landlord, which is in turn also causing a strain on the Landlord's mental health.
23. The Landlord also testified that they support their elderly mother, who currently lives independently.
24. The Landlord's Legal Representative indicated that as a result of the financial difficulties incurred by the Landlord, the Landlord was at risk of losing the rental unit. I asked the Landlord's Legal Representative to confirm whether or not the Landlord had filed for bankruptcy or entered into a consumer proposal.
25. The Landlord's Legal Representative confirmed that the Landlord had not filed for bankruptcy, nor had they entered into a consumer proposal; and that the Landlord was therefore still in possession and control of the rental unit. No submissions were received from the Landlord regarding the potential for a foreclosure or action by a finance company regarding the property.
26. The Tenant explained that they would like to continue their tenancy as they are in the process of building their own home (located in Hamilton) which is tentatively scheduled to

close towards the end of the month of August 2024. The Tenant therefore expects to finalize their move no later than September 16, 2024.

27. The Tenant indicated that they live in the rental unit with their fiancé, and three (3) children (between the ages of 7-months old and 10 years old). The children currently attend a summer camp (hereafter referred to as the “camp”), which is scheduled to end on August 26, 2024. Their eligibility to the camp is based on their address. If they are required to move, they may no longer be able to attend the camp.
28. Under cross-examination, the Tenant clarified that they currently have a shared custody of their two (2) eldest children. During the school year, the Tenant has custody of the children during weekends. During this summer break, the Tenant is expected to have the primary custody of the children until the end of the month of August 2024.
29. The Tenant stated that they consistently paid their rent in full and on time between December 2021, and October 2023. They indicated that prior to being served with an N12 Notice of Termination – requesting that the Tenant vacate the rental unit by the end of December 2023 - (hereafter referred to as the “N12 Notice”), the Tenant submitted their rent payments to the Landlord by post-dated cheques. Upon being served with the N12 Notice, the Tenant indicated that the Landlord returned the remaining post-dated cheques to the Tenant as well.
30. After receiving the N12 Notice, the Tenant indicated to the Landlord that they would not be able to move out of the rental unit by December 31, 2023, as their fiancé was pregnant and it would be difficult to find alternate housing accommodations and organize a move during the wintertime, with young children.
31. The Tenant also shared text messages between themselves and the Landlord, in which the Landlord indicated that they “don’t need the rent” as they require the rental unit for their own residential occupancy, as it appears on the text messages between the parties sent between December 5, 2023, and December 12, 2023 (Exhibit 2).
32. While the Tenant sought to expand further as to why the Landlord required the rental unit for their own use, I explained that the sole application before me was an L1 application for which the Landlord sought an order to terminate the tenancy and evict the Tenant because the Tenant did not pay the rent that the Tenant owes, and that such submissions may not be relevant to the current proceedings.
33. The Tenant therefore pivoted their submissions to explain that should the Board rule in favour of the Landlord’s application, they would need to have the eviction date delayed, as it would not be feasible for the Tenant to move to a temporary location until the construction of their new home is completed. The Tenant clarified that the closing of the new home has already been delayed twice, and therefore they are confident that they will be able to meet their current closing date (which is currently scheduled for the end of the month of August 2024).
34. Furthermore, the Tenant’s fiancé is currently still attending a medical clinic located in close proximity to the rental unit, as a result of a difficult pregnancy.
35. Moreover, the Tenant believes that the Landlord has made it unduly difficult for the Tenant to be able to rent accommodations in the future as they contacted the local press which led to a news report about the Tenant.

36. The Tenant confirmed that they do not currently have the amount of \$25,600.00 available to pay the Landlord. The Tenant clarified that while they originally set the funds aside – recognizing that it is their obligation to pay the rent, they then had to rely on these funds for their expenses as their income related to their small business reduced due to non-paying clients. The Tenant agreed that they had not paid any rent since late 2023.

Analysis

37. While the Tenant is of the position that the Landlord was the author of their own prejudice as they returned post-dated rent cheques to the Tenant following the service of the N12 Notice, the Tenant did not demonstrate that they attempted to pay the Landlord the rent in any way, shape or form, after the reception of the N12 Notice.
38. While the Landlord likely returned the post-dated cheques under the guise that the Tenant would comply with the N12 Notice, it should have always been apparent to the Tenant that the Landlord was indeed seeking the rent to be paid when they declined to move out of the unit. This is reinforced by the fact that the Tenant was served with an N4 Notice on January 6, 2024, and a corresponding application was filed with the Board on April 1, 2024. By doing so, the Landlord communicated in no uncertain terms their intents to have the Tenant pay them the monthly rent as long as they resided in the unit.
39. The Tenant did not dispute owing the amount being claimed by the Landlord, and stated that they are seeking to extend their tenancy until their new home is built. The Tenant explained that renting temporary accommodations is not feasible as they would have to move a young family twice in a short period of time. The Tenant also opined that renting alternate housing accommodations was made more difficult due to the Landlord contacting the local news and reporting to them that the Tenant has failed to pay the rent. I do, however, note that the Tenant did not demonstrate that they attempted to rent alternate accommodations or that they were declined by rentals due to the public nature of their current dispute with the Landlord.
40. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would not be unfair to postpone the eviction until September 20, 2024, pursuant to subsection 83(1)(b) of the Act. The additional time will allow the Tenant to finalize their move to their new home, all while limiting disruptions to their children's summer activities. As the Tenant has indicated that they do not currently have the financial capability to pay the arrears, I find that any additional extension of time to terminate the tenancy would not be reasonable.
41. While the Landlord has stated that they are facing a financial prejudice as a result of the Tenant's non-payment of rent, the prejudice to the Landlord (as a result of the delayed eviction) is minimized as the Landlord holds a last month's rent on deposit and the extension is not prolonged.

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:**

- \$28,986.00 if the payment is made on or before August 31, 2024. See Schedule 1 for the calculation of the amount owing.

OR

- \$32,186.00 if the payment is made on or before September 20, 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 September 20, 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 September 20, 2024.**

5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$19,645.04. 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 \$105.21 per day for the use of the unit starting July 5, 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 September 20, 2024, the Tenant will start to owe interest. This will be simple interest calculated from September 21, 2024, at 7.00% annually on the balance outstanding.

8. If the unit is not vacated on or before September 20, 2024, then starting September 21, 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 21, 2024.

August 23, 2024

Date Issued

 Alexandre Traboulsi
 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 21, 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	\$28,800.00
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	\$28,986.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before September 20, 2024

Rent Owing To September 30, 2024	\$32,000.00
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	\$32,186.00

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

Rent Owing To Hearing Date	\$22,820.84
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	- \$3,200.00
Less the amount of the interest on the last month's rent deposit	- \$161.80
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	\$19,645.04
Plus daily compensation owing for each day of occupation starting July 5, 2024	\$105.21 (per day)

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