



Order under Section 69 Residential Tenancies Act, 2006

Citation: Portsmouth Residential Inc. v Macdonald, 2024 ONLTB 3963

Date: 2024-01-17

File Number: LTB-L-045675-23

In the matter of: 2, 103 DAY ST
KINGSTON ON K7K4Y3

Between: Portsmouth Residential Inc. Landlord

And

Ashley Macdonald Tenant

Portsmouth Residential Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Ashley Macdonald (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on December 14, 2023.

The Landlord's representative, Daniel Greanya and the Tenant attended the hearing.

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 lawful rent is \$1,946.48. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$63.99. This amount is calculated as follows: $\$1,946.48 \times 12$, divided by 365 days.
5. The Tenant has paid \$3,798.00 to the Landlord since the application was filed.
6. The rent arrears owing to December 31, 2023 are \$13,262.40. The Tenant did not dispute the rent arrears owing to the Landlord.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$1,899.00 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.

9. Interest on the rent deposit, in the amount of \$65.16 is owing to the Tenant for the period from August 1, 2022 to December 14, 2023.

Relief from Eviction

10. 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 January 31, 2024 pursuant to subsection 83(1)(b) of the Act.
11. The Landlord's representative testified that they attempted to communicate with the Tenant regarding a repayment plan on a monthly basis since the Tenant fell into arrears. The Tenant paid an amount toward the arrears in response. I am satisfied the Landlord met their obligation to attempt to negotiate a repayment plan with the Tenant.
12. The Landlord sought a 'standard' eviction order based on the amount of the arrears. The arrears were described as substantial with a few good faith payments made by the Tenant since the application was filed.
13. The Tenant wants to preserve her tenancy and avoid eviction. The Tenant proposed a repayment plan where she would pay an additional amount per month in addition to her monthly rent. The Tenant admitted her monthly income only covers her monthly expenses which is approximately \$2,000.00. Her income consists of her employment as a personal trainer and she has recently enrolled with the Canadian Armed Forces however, she has not been accepted and has an appointment with a recruiter in early 2024. Her expenses are roughly \$600.00 per month.
14. The Tenant testified that she was behind as the new Landlord took over and there were some issues with paying the rent on the portal. The Tenant testified that she has not paid the rent as there have been issues with the online portal leading to confusion about what is owing. The Tenant did not dispute the amount of arrears owing to the Landlord.
15. The Tenant's limited income and unsubstantiated enrollment in the armed forces suggests that this tenancy is not viable. Her suggested payment plan would have the Landlord made whole within approximately 12 months which would include \$1,120.00 per month as a minimum payment to the Landlord on top of the monthly rent. However, the Tenant did not provide any evidence to testify that they would be her paying the rent and the arrears. Based on the evidence before me, I find \$1,120.00 in addition to the monthly rent to be excessive, given the circumstances.
16. I find a delay of eviction to January 31, 2024 to be reasonable. It provides the Tenant with some additional time to find alternative housing or to source the money to pay the Landlord back the rent she owes. I will also note that the Tenant has had since the hearing date to look for housing and as well may be given additional time due to the inevitable delay with the Landlord enforcing this order through the Sheriff's office. This delay is not so extensive that it shall severely prejudice the Landlord.

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:**
 - \$15,394.88 if the payment is made on or before January 31, 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 January 31, 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 January 31, 2024**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$8,534.62. 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 \$63.99 per day for the use of the unit starting December 15, 2023 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 January 31, 2024, the Tenant will start to owe interest. This will be simple interest calculated from February 1, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before January 31, 2024, then starting February 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 February 1, 2024.

January 17, 2024**Date Issued**

 Camille Clyne

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 August 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 January 31, 2024

Rent Owing To January 31, 2024	\$19,006.88
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,798.00
Total the Tenant must pay to continue the tenancy	\$15,394.88

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

Rent Owing To Hearing Date	\$14,110.78
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,798.00
Less the amount of the last month's rent deposit	- \$1,899.00
Less the amount of the interest on the last month's rent deposit	- \$65.16
Total amount owing to the Landlord	\$8,534.62
Plus daily compensation owing for each day of occupation starting December 15, 2023	\$63.99 (per day)