



Order under Section 69 Residential Tenancies Act, 2006

Citation: HOMESTEAD LAND HOLDINGS LIMITED v Holmes, 2024 ONLTB 17028

Date: 2024-03-08

File Number: LTB-L-013689-22

In the matter of: 103, 27 ELMWOOD
KINGSTON ON K7M8Y5

Between: HOMESTEAD LAND HOLDINGS LIMITED Landlord

And

David Holmes Tenant

HOMESTEAD LAND HOLDINGS LIMITED (the 'Landlord') applied for an order to terminate the tenancy and evict David Holmes (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on February 28, 2024.

Only the Landlord's legal representative Crystal Sankey attended the hearing.

As of 1:23 pm, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

Preliminary Issues:

The Previous Board Order

1. On September 13, 2022 the matter was heard before the Board and the parties participated in mediation where an order was agreed on consent.
2. The Board inadvertently did not issue the order and an interim order was issued to the parties on January 9, 2024 advising the parties of the clerical error and the matter to be reconvened on a date to be set by the Board.

3. The Board issued a new Notice of Hearing on or around January 22, 2024. The Tenant's notice was not returned as undeliverable.

Possession of the Rental Unit

4. At the February 28, 2024 hearing, the Landlord's legal representative said the Tenant was provided details specific to this hearing and the Landlord's disclosure when it was slid under the Tenant's door on February 21, 2024. There has been no communication from the Tenant.
5. On February 22, 2024, the Landlord discovered the keys to the rental unit taped to the rental unit door. The Tenant has not given notice to vacate the rental unit and has not returned vacant possession. The Landlord's legal representative said the rental unit contains possessions belonging to the Tenant.
6. Based on these submissions, I find the Tenant maintains possession of the rental unit. There is no evidence that the Tenant notified the Landlord of their intention to vacate the rental unit and the keys taped to the door could have been for a variety of reasons. The Tenant also has possessions in the rental unit.
7. I am also satisfied that the Tenant was put on further notice of this hearing, the day before the Landlord discovered the keys taped to the door. Accordingly, the matter proceeded as uncontested.

The L1 Application – De Novo

8. 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.
9. As of the hearing date, the Tenant was still in possession of the rental unit.
10. The lawful rent for 2023 was \$1,170.37.
11. The lawful rent commencing January 1, 2024 is \$1,199.62 and due on the 1st day of each month.
12. Based on the Monthly rent, the daily rent/compensation is \$39.44. This amount is calculated as follows: $\$1,199.62 \times 12$, divided by 365 days.
13. The Tenant has paid \$15,149.89 to the Landlord since the application was filed.
14. The rent arrears owing to February 29, 2024 are \$19,508.95.
15. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

16. The Landlord collected a rent deposit of \$1,303.50 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.
17. Interest on the rent deposit, in the amount of \$21.92 is owing to the Tenant for the period from June 2, 2023 to February 28, 2024.
18. The Landlord's legal representative said the Tenant was provided opportunity to discuss payment plan options by letter when the N4 was served to the Tenant, the L1 filed with the Board and when the original hearing was scheduled. Additionally, the Landlord agreed to work with the Tenant in an effort to preserve the tenancy when they agreed to the payment plan at the September 13, 2022 hearing.
19. The Landlord's legal representative said there are no minors living in the rental unit and has no further knowledge of any circumstances to be considered in delaying or denying the request to terminate the tenancy.
20. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
21. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

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:**
 - \$20,552.09 if the payment is made on or before March 19, 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 March 19, 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 March 19, 2024**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$17,934.12. 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 \$39.44 per day for the use of the unit starting February 29, 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 March 19, 2024, the Tenant will start to owe interest. This will be simple interest calculated from March 20, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before March 19, 2024, then starting March 20, 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 March 20, 2024.

March 8, 2024

Date Issued

Dana Wren

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 September 20, 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 March 19, 2024

Rent Owing To March 31, 2024	\$35,515.98
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$15,149.89
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	\$20,552.09

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

Rent Owing To Hearing Date	\$34,223.43
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$15,149.89
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	- \$1,303.50
Less the amount of the interest on the last month's rent deposit	- \$21.92
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	\$17,934.12
Plus daily compensation owing for each day of occupation starting February 29, 2024	\$39.44 (per day)

2024 ONL TB 17028 (CanLI)