



Order under Section 69 Residential Tenancies Act, 2006

Citation: Winchester Glen Retirement Community v Noakes, 2024 ONLTB 20821

Date: 2024-04-02

File Number: LTB-L-074011-23

In the matter of: 262, 2501 THOROUGHbred ST
OSHAWA ON L1L0P8

Between: Winchester Glen Landlord
Retirement Community

And

Julia Noakes Tenant

Winchester Glen Retirement Community (the 'Landlord') applied for an order to terminate the tenancy and evict Julia Noakes (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 12, 2024. The Landlord's agent, Jennifer Stevens, and the Landlord's representative, John McIntyre, attended the hearing. As of 5:51 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.

Preliminary Issues:

1. The Landlord's representative and agent both confirmed that the Landlord is Winchester Glen Retirement Community as listed in the N4 Notice to the Tenant. The Landlord's L1 application is therefore amended, pursuant to s. 201(f) of the *Residential Tenancies Act, 2006* (the "Act"), to reflect the correct name of the Landlord.
2. The Landlord's representative and agent also confirmed that former Tenant Joan Smith, listed as a Tenant in the Landlord's N4 Notice, is no longer a party to this application, and therefore the Landlord requests the L1 application be amended accordingly. The representative explained that former Tenant Joan Smith vacated the unit on August 18, 2023, after signing an N11 Agreement to Terminate the Tenancy with the Landlord on July 31, 2023. The representative submitted that Tenant Julia Noakes refused to sign the N11. The representative stated that the Landlord does not seek rent arrears from former Tenant Joan Smith.
3. On the basis of the evidence provided, I am satisfied that Joan Smith and Julia Noakes were joint Tenants of the unit, and the joint tenancy did not terminate on August 18, 2023 given that both joint Tenants did not sign the N11 Agreement to Terminate the Tenancy with the Landlord on July 31, 2023. There is no provision in the Act for one joint Tenant to unilaterally sever his or her interest in the tenancy, other than for circumstances of

violence or abuse, as provided in s. 47.2(1) of the Act. Without any evidence of violence or abuse in this joint tenancy, or any agreement between both joint tenants to amend the terms of their joint tenancy by removing Tenant Joan Smith, I find that Joan Smith has not lawfully ended her interest in the joint tenancy. However, Joan Smith has vacated the rental unit, and is therefore considered, pursuant to s. 87(1)(b) of the Act, as a tenant no longer in possession of the rental unit.

4. I accept that a landlord who seeks rent arrears from a tenant no longer in possession of a rental unit must apply to the Board using an L10 application, not an L1 application. I also accept that in this matter the Landlord does not seek to pursue rent arrears from Joan Smith. Finally, without Joan Smith at the hearing, I am unable to determine if Joan Smith received notification of this L1 hearing, pursuant to the requirements for an L10 hearing as provided in s. 191(1.0.1) of the Act, and the Board's Rules of Procedure 3.3. For these reasons, the Landlord's request to remove former Tenant Joan Smith from the L1 application is granted, in accordance with the Board's Rules of Procedure 15.4.

Determinations:

5. The Landlord served the Tenant with a valid Notice to End the 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.
6. As of the hearing date, the Tenant was still in possession of the rental unit.
7. The lawful rent is \$4,495.00. It is due on the 1st day of each month.
8. Based on the Monthly rent, the daily rent/compensation is \$147.78. This amount is calculated as follows: \$4,495.00 x 12, divided by 365 days.
9. The Tenant has not made any payments since the application was filed.
10. The rent arrears owing to March 31, 2024 are \$31,480.00.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. There is no last month's rent deposit.
13. The Landlord's representative submitted that the Landlord sent a letter to the Tenant on August 22, 2023, and also spoke with the Tenant that same day, in an effort to negotiate a payment plan for the arrears; however, the Tenant never responded to these offers. The Landlord's agent testified that on August 29, 2023, the Tenant advised her that she had no intention of paying any arrears or on-going rent.
14. 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.
15. The Landlord's representative and agent were not aware of any circumstances that should be considered in a determination of whether to provide the Tenant with eviction relief, nor

was the Tenant or their representative present at the hearing to provide submissions with respect to the Tenant's relief from eviction. For these reasons, it would be unfair to the Landlord to grant the Tenant with eviction relief.

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:**
 - \$36,161.00 if the payment is made on or before April 13, 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 13, 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 13, 2024.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$28,944.36. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$147.78 per day for the use of the unit starting March 13, 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 April 13, 2024, the Tenant will start to owe interest. This will be simple interest calculated from April 14, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before April 13, 2024, then starting April 14, 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 April 14, 2024.

April 2, 2024

Date Issued

Frank Ebner

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 October 14, 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	\$35,975.00
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	\$36,161.00

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

Rent Owing To Hearing Date	\$28,758.36
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	- \$0.00
Less the amount of the interest on the last month's rent deposit	- \$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 amount owing to the Landlord	\$28,944.36
Plus daily compensation owing for each day of occupation starting March 13, 2024	\$147.78 (per day)