



Order under Section 69 Residential Tenancies Act, 2006

Citation: Ganon v Hervieux, 2023 ONLTB 77254

Date: 2023-12-15

File Number: LTB-L-046131-22

In the matter of: 344 ELM ST
SUDBURY ON P3C1V8

Between: Katienefoua Ganon and Louise Noelle Landlords
Tiehourou

And

George Hervieux Tenant

Katienefoua Ganon and Louise noelle Tiehourou (the 'Landlords') applied for an order to terminate the tenancy and evict George Hervieux (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on July 6, 2023.

The Landlord, the Landlord's representative Monique Laderoute and the Tenant attended the hearing.

Preliminary Issues:

Stay in the Proceeding

1. The Tenant has claimed the matter is in Superior Court due to the illegal sale of the property.
2. The Tenant did not provide any evidence nor a file # with respect to an active file within the Superior Courts revealing any potential stay on eviction.
3. The Tenant did acknowledge he spoke with "lawyers in Toronto" regarding the sale of the property and those lawyers informed the Tenant a stay could potentially be granted.
4. Based on the evidence before the Board and this application being an L1 application for rental arrears, the L1 application will proceed.

Application is Res Judicata

5. The Tenant alleges the application can not proceed as it was already heard and dismissed by the Board. Should this be the case, the legal term known as *res judicata* would apply to this application, meaning the application can not proceed as it has already been heard.
6. The application the Tenant claims was already heard and decided by the Board is the LTB File Number: NOL-42873-21.
7. Upon further investigation, it came to the attention of the Board the application with file number NOL-42873-21 was an L2 application via an N12 for Landlord's own use.
8. The Tenant is correct this application was dismissed by the Board for a defective N12 but the application before the Board today is an L1 application for rental arrears and not an L2 application. These are two very different types of application.
9. Under these circumstances, the application is not res judicata and the L1 application for rental arrears will proceed.

Section 82 – purchased water boiler heating system

10. The Tenant claims they are entitled to \$14,900.00 for the installation of a water heating boiler system.
11. The boiler heating system was installed in 2021 when the previous owner owned the property.
12. The boiler heating system can not be claimed against the Landlord in this application and is also past the statutory limitation period of 1 year the Tenant can seek remedy.
13. The Tenant, against the current Landlord, who is the Landlord found in this application is entitled to \$0 in rental abatement on this LTB application.

Lease agreement

14. The Landlord's representative submitted evidence of the current lease agreement.
15. Although I question the actual lease submitted as evidence, I do accept the Landlord's representative's submissions with respect of payments received in the amount of \$1350.00 to establish a monthly lease of \$1,350.00 in lawful monthly rent.
16. The current lawful monthly should be \$1,350.00 effective the date the current Landlord owned the property and received monthly rental payments in this amount.

Subletting rooms

17. The Tenant when making section 83 submission to the lengthen the time needed to postpone an eviction, revealed to the Board that rooms on the property are being rented.

18. The Tenant did not reveal how much the rooms were being rented but did acknowledge rooms were rented by other individuals with the Landlord's consent or knowledge.

Post Hearing Matters:

Amount to void the order

1. At the time of the order being issued, the amount outstanding is above the Board's monetary jurisdiction.
2. The voiding provision for an order under Section 74 of the Act is set out in subsection 4, which provides:
 - (4) An eviction order referred to in subsection (3) is void if the tenant pays to the landlord or to the Board, before the order becomes enforceable,
 - (a) the amount of rent that is in arrears under the tenancy agreement;
 - (b) the amount of additional rent that would have been due under the tenancy agreement as at the date of payment by the tenant had notice of termination not been given;
 - (c) the amount of NSF cheque charges charged by financial institutions to the landlord in respect of cheques tendered to the landlord by or on behalf of the tenant, as allowed by the Board in an application by the landlord under section 87;
 - (d) the amount of administration charges payable by the tenant for the NSF cheques, as allowed by the Board in an application by the landlord under section 87; and
 - (e) the costs ordered by the Board. 2006, c. 17, s. 74 (4).
3. While the Board cannot order a person to pay more than \$35,000.00 in accordance with s. 207.1 of the Act, one must consider *Reed v Rosen, 2023 ONLTB 19378* which has been upheld at divisional court *Rosen v. Reed, 2023 ONSC 6482*. As such, I find that this does not apply to the "stay and pay" option set out in the order below. An order can terminate the tenancy and require the Tenant to pay the amount up to the Board's monetary jurisdictional limit of \$35,000.00 plus the cost of filing the application. The Tenant can choose to pay the full amount of arrears rent, and costs owing to the Landlords if they choose not to vacate the unit. This amount is optional and only required if the Tenants elects to continue the tenancy. Therefore, the Board is not ordering this amount to be paid and is not ordering an amount that exceeds the limit.

Determinations:

1. The Landlords served the Tenant with a valid Notice to End Tenancy Early for Nonpayment 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 \$1,350.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$44.38. This amount is calculated as follows: \$1,350.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to July 31, 2023 are \$32,400.00.
7. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.
9. The rental arrears are substantial, the Tenant has made only a few rental payments to the new Landlords and has made no payments since the application was filed. The Tenant has also acknowledged that they are renting out other rooms in the property while not paying any financial compensation to the Landlords. Although it is unclear on the exact amount the Tenant is collecting, be it above or below the lawful monthly rent, the Tenant is still collecting rental payment and becoming unjustly enriched. Under all these circumstances, the Landlords are being severely prejudiced.
10. 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 Landlords 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. Due to the holiday schedule in the month of December the termination date the Tenant has to void the order is January 2, 2024.

It is ordered that:

1. The tenancy between the Landlords 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 Landlords or to the LTB in trust:**
 - \$39,336.00 if the payment is made on or before December 31, 2023. See Schedule 1 for the calculation of the amount owing.
- OR**
- \$40,686.00 if the payment is made on or before January 2, 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 2, 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 2, 2024**

5. If the Tenant does not void the order, the Tenant shall pay to the Landlords \$31,502.28. 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 Landlords compensation of \$44.38 per day for the use of the unit starting July 7, 2023 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlords the full amount owing on or before January 2, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 2, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before January 2, 2024, then starting January 3, 2024, the Landlords 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 Landlords on or after January 3, 2024.

December 18, 2023

Date Issued

André-Paul Baillargeon-Smith

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 July 3, 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 December 31, 2023

Rent Owing To December 31, 2023	\$39,150.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlords since the application was filed	- \$0.00
Less the amount the Landlords 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	\$39,336.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before January 2, 2024

Rent Owing To January 31, 2024	\$40,500.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlords since the application was filed	- \$0.00
Less the amount the Landlords 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	\$40,686.00

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

Rent Owing To Hearing Date	\$31,316.28
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlords 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 Landlords 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 Landlords	\$31,502.28

Plus daily compensation owing for each day of occupation starting July 7, 2023	\$44.38 (per day)
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