



Order under Section 69 Residential Tenancies Act, 2006

Citation: Couvrette v Hutchinson, 2023 ONLTB 79006

Date: 2023-12-11

File Number: LTB-L-003031-23

In the matter of: BASEMENT UNIT, 22 PITT AVE TORONTO
ON M1L2R1

Between:

Yuet -mei Chan

And

Damien Hutchinson

Dan Couvrette Landlord

Tenant

Dan Couvrette and Yuet-mei Chan (together, the 'Landlord') applied for an order to terminate the tenancy and evict Damien Hutchinson (the 'Tenant') because:

- the Tenant did not pay the rent that the Tenant owes (L1 Application);
- the Tenant has been persistently late in paying the Tenant's rent (L2 Application).

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on November 21, 2023.

The Landlord Dan Couvrette, the Landlord's Legal Representative Bill Burd, and the Tenant Damien Hutchinson 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 \$845.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$27.78. This amount is calculated as follows: \$845.00 x 12, divided by 365 days.
5. The Tenant has paid \$4,835.00 to the Landlord since the application was filed.
6. The rent arrears owing to November 30, 2023 are \$10,610.00.
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 \$725.00 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 \$191.21 is owing to the Tenant for the period from August 1, 2008 to November 21, 2023.

Late payment of rent

10. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy is terminated on January 31, 2024.
11. On December 22, 2022, the Landlord gave the Tenant an N8 notice of termination (the 'N8'). The Tenant was in possession of the rental unit on the date the application was filed.
12. The parties agree that the Tenant paid the rent late 12 times in the 12-month period listed on the N8 and has been late every month since the N8 was served.
13. The Landlord testified that he advised the Tenant that paying rent late is unacceptable, but the Tenant continued to pay rent late anyway. Due to the late payments, the Landlord has to juggle his finances to pay his mortgage and other personal expenses.
14. I find that the Tenant has persistently paid his rent late.

Relief from eviction

15. 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.
16. The Tenant testified that he had been having issues in his personal life starting January 2022 and had been suspended from his job for over a year, which caused the arrears and late payment of rent. He has since been reinstated to his job in October 2023 and is requesting a payment plan to preserve his tenancy. The Tenant plans to get a second job to repay the arrears.

17. Having reviewed the Tenant's current monthly income and expenses, I find that he cannot afford to make arrears payments on top of paying the monthly rent on time. As such, a payment plan is not a reasonable remedy in this matter.
18. The Tenant testified that he has a disability, but that it does not affect his ability to vacate the rental unit. According to the Tenant, he can move out within two months and may be able to stay with his father temporarily.
19. Taking into account the Tenant's circumstances and the fact that the Landlord is holding a last month's rent deposit, I find that it would not be unfair to postpone the eviction to January 31, 2024.

It is ordered that:

L1

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:**
 - \$11,641.00 if the payment is made on or before December 31, 2023. See Schedule 1 for the calculation of the amount owing.
- OR**
 - \$12,486.00 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 \$9,618.17. 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 \$27.78 per day for the use of the unit starting November 22, 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 December 22, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 23, 2023 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.

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10. Even if the Tenant voids the order as set out above, the tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before January 31, 2024.
11. 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.
12. 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.

December 11, 2023

Date Issued

Kate Sinipostolova

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 December 31, 2023

Rent Owing To December 31, 2023	\$16,290.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$4,835.00
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	\$11,641.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before January 31, 2024

Rent Owing To January 31, 2024	\$17,135.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$4,835.00
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	\$12,486.00

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

Rent Owing To Hearing Date	\$15,183.38
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$4,835.00
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	- \$725.00
Less the amount of the interest on the last month's rent deposit	- \$191.21

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	\$9,618.17
Plus daily compensation owing for each day of occupation starting November 22, 2023	\$27.78 (per day)