



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: Victoria Park Management v Johnson, 2023 ONLTB 77620

Date: 2023-12-07

File Number: LTB-L-069487-22

In the matter of: A2, 195 LIMERIDGE RD W HAMILTON
ON L9C2V4

Between: Victoria Park Management Landlord

And

Nicole Johnson Tenant

Victoria Park Management (the 'Landlord') applied for an order to terminate the tenancy and evict Nicole Johnson (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes. (L1 Application)

The Landlord also applied for an order to terminate the tenancy and evict the Tenant because the Tenant has been persistently late in paying the Tenant's rent. The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date. (L2 Application)

This application was heard by videoconference on November 9, 2023.

Only the Landlord's legal representative Karolina Aguiar attended the hearing.

As of 2:14p.m., 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:

L1 Application

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 \$1,144.00. It is due on the 1st day of each month.

4. Based on the Monthly rent, the daily rent/compensation is \$37.61. This amount is calculated as follows: \$1,144.00 x 12, divided by 365 days.
5. The Tenant has paid \$12,495.00 to the Landlord since the application was filed.
6. The rent arrears owing to November 30, 2023, are \$2,235.59.
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 \$1,080.03 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 \$23.15 is owing to the Tenant for the period from January 1, 2023, to November 9, 2023.

L2 Application

10. On November 14, 2022, the Landlord gave the Tenant an N8 Notice of termination (deemed served November 19, 2022). This notice of termination alleges that the Tenant has been persistently late in paying the Tenant's rent during the period from February 2022 to November 2022. For November 2022 the notice indicates that no rent was paid by the Tenant.
11. The notice outlines for each month when the late payments were made by the Tenant.
12. Based on the evidence adduced at the hearing, I am satisfied that the Tenants have persistently failed to pay the rent on the date it was due. The rent is due on the 1st day of each month. The rent has been paid late ten times from February 2022 to November 2022.

Relief from Eviction

13. In relation to the L1 application, 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.
14. With respect to the L2 application, I have also considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.
15. At the hearing, the Landlord's legal representative advised the Board that the Landlord is seeking a standard (voidable) eviction order on the L1 application, and a pay on time (conditional relief) on the L2 Application.
16. What this means is that if the Tenant voids the L1 Application, then pursuant to the L2 Application, the Tenancy continues subject to conditions.

17. In the circumstances of the case, I am satisfied the proposed pay on time condition on the L2 application is reasonable and occasions little prejudice on the Tenant as the alternative would have been a non remedial eviction order on the L2 application.
18. Accordingly, I will order a standard voidable eviction order on the L1 application, and If the Tenant voids the L1 Application, then the tenancy will continue subject to conditions on the L2 application.

It is ordered that:

L1 Application

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:
 - \$3,565.59 if the payment is made on or before December 18, 2023. 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 December 18, 2023, 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 December 18, 2023
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$512.90. 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 \$37.61 per day for the use of the unit starting November 10, 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 18, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 19, 2023, at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 18, 2023, then starting December 19, 2023, 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 December 19, 2023.

L2 Application

10. If the Tenant voids the L1 portion of the order in accordance with paragraph two above, the tenancy shall continue on the following terms.

11. The Tenant shall pay to the Landlord the monthly rent due on or before the first day of the month for the period January 1, 2024, to December 1, 2024.
12. If the Tenant fails to make any of the payments in paragraph 11 above, the Landlord may apply under section 78 of the Act, within 30 days of the breach and without notice to the Tenant, for an order terminating the tenancy and evicting the Tenant.

December 7, 2023

Date Issued

Inderdeep Padma

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 June 19, 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 18, 2023

Rent Owing To December 31, 2023	\$15,874.59
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$12,495.00
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	\$3,565.59

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

Rent Owing To Hearing Date	\$13,925.08
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$12,495.00
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	- \$1,080.03
Less the amount of the interest on the last month's rent deposit	- \$23.15
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	\$512.90
Plus, daily compensation owing for each day of occupation starting November 10, 2023	\$37.61 (per day)