



Order under Section 69 Residential Tenancies Act, 2006

Citation: 1864447 ONTARIO LTD v Delic, 2023 ONLTB 79789

Date: 2023-12-06

File Number: LTB-L-071596-22

In the matter of: 1, 29 HURON ST
Toronto ON M5T2A4

Between: 1864447 ONTARIO LTD Landlord

And

Andrew Delic Tenant

1864447 ONTARIO LTD (the 'Landlord') applied for an order to terminate the tenancy and evict Andrew Delic (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

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

The Landlord Y. Xiali and the Tenant attended the hearing.

Request to adjourn:

1. On the onset of the hearing, the Tenant requested to adjourn the matter because his legal representative was not in attendance. That he believed his representative to be sick and on leave, as he had not heard from his representative in a while. The Tenant submitted that he only tried to reach out to his representative on Thursday and Friday of last week, but there was no response. That he did not reach out to his representative sooner because he believed his representative would be available to attend the hearing.
2. The Landlord disputed the adjournment request as the arrears were over 35k and the Tenant had not made a request to adjourn from the Landlord prior to the hearing.

3. The Tenant was served with a copy of the notice of hearing on September 21, 2023. The Tenant had a month and a half to communicate with his representative and failed to do so. The adjournment request was denied.

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 \$2,696.98. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$88.67. This amount is calculated as follows: \$2,696.98 x 12, divided by 365 days.
5. The Tenant has paid \$1,500.00 to the Landlord since the application was filed.
6. The rent arrears owing to November 30, 2023 are \$35,797.26. The amount of money the Tenant must pay to continue the tenancy, as set out in paragraph two below, exceeds \$35,000.00. While the Board's monetary jurisdiction is \$35,000.00, the Divisional Court recently confirmed in *Galaxy Real Estate Core Ontario LP v. Kirpichova et al.*, 2023 ONSC 4356, that the pursuant to section 74(3)(a) of the *Residential Tenancies Act, 2006* ("Act"), the full amount of rent arrears owing must be paid by the tenant to void the order. Therefore, the amount of money the Tenants must pay to void the order and continue the tenancy is not subject to the Board's monetary jurisdiction.
7. **The Landlord understands, by accepting the Board's monetary jurisdiction limit, the Landlord cannot pursue the Tenants for any amount owing over \$35,000.00 in any other application or court proceeding if the tenancy is terminated.**
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$2,600.00 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.
10. Interest on the rent deposit, in the amount of \$130.21 is owing to the Tenant for the period from April 30, 2021 to November 6, 2023.

Relief from eviction

11. The Tenant did not dispute the arrears owing. The Tenant submitted that he has been self employed in marketing for the last four years, but that work has recently slowed down. That he does not want to leave the unit, but he cannot control the flow of business.

12. The Tenant submitted that he is currently obtaining more clients to maintain his monthly income of \$5,000.00 to \$7,500.00 per month. That he hopes to sign a new client the following week and more in December, however, it can take between 6-8 weeks to close a client. The Tenant submitted that some prospects have promised to sign with him.
13. The Tenant submitted that he can pay rent in full and on time, plus an additional \$1,400.00 per month towards arrears commencing January 15, 2024, a 26 month payment plan. The Tenant submitted that if a payment plan is not acceptable, he is looking for a termination date of January 31, 2024 to allow him time to move as he does not want to move during the holidays and suffers from some medial issues that limit his ability to move.
14. The Landlord submitted that the Tenant's statements are all "empty promises". That the Tenant will never pay. That the arrears are extremely high and that he is struggling to maintain his mortgage payments up to date as his interest rate has also increased. That he has to attend the bank to address his financial issues. The Landlord submitted that he does not trust the Tenant's business plan and requested a standard order.
15. Based on the Tenant's direct testimony, I cannot order a conditional payment plan as the Tenant requested. The Tenant's business plan is unrealistic as its based on possible outcomes for potential income. Since the application was filed in November 2022, the Tenant has only paid \$1,500.00 towards the rent. I find that granting a 26-month payment plan to be prejudicial to the Landlord and the Tenant. If the potential income is not earned, the Tenant will go into higher arrears.
16. 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 19, 2024 pursuant to subsection 83(1)(b) of the Act.

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:**
 - \$38,680.24 if the payment is made on or before December 31, 2023. See Schedule 1 for the calculation of the amount owing.
- OR**
- \$41,377.22 if the payment is made on or before January 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 January 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 January 19, 2024**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord **\$31,088.09** 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 \$88.67 per day for the use of the unit starting November 7, 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 17, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 18, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before January 19, 2024, then starting January 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 January 20, 2024.

December 6, 2023

Date Issued

Mayra Sawicki

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 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 December 31, 2023

Rent Owing To December 31, 2023	\$39,994.24
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,500.00
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	\$38,680.24

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before January 19, 2024

Rent Owing To January 31, 2024	\$42,691.22
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,500.00
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	\$41,377.22

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

Rent Owing To Hearing Date	\$35,132.30
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,500.00
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	- \$2,600.00
Less the amount of the interest on the last month's rent deposit	- \$130.21

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	\$31,088.09
Plus daily compensation owing for each day of occupation starting November 7, 2023	\$88.67 (per day)