



Order under Section 69 Residential Tenancies Act, 2006

Citation: Grayley v Sutton, 2023 ONLTB 78041

Date: 2023-12-04

File Number: LTB-L-024672-23

In the matter of: 74, 700 Parkhill Road west
PETERBOROUGH ON K9J7W9

Between: Autumn Grayley Landlord

And

Amanda Sutton Tenant

Autumn Grayley (the 'Landlord') applied for an order to terminate the tenancy and evict Amanda Sutton (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on August 18, 2023, adjourned from July 18, 2023 due to lack of time to complete the matter.

The Landlord's legal representative Elena Jacob, Tenant's witness Michelle Templeton (a former maintenance person/superintendent at the rental complex), and the Tenant 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 \$1,933.15. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$63.56. This amount is calculated as follows: \$1,933.15 x 12, divided by 365 days.
5. The Tenant has paid \$3,821.36 to the Landlord since the application was filed.
6. The rent arrears owing to August 31, 2023 are \$20,199.24.
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 \$1,933.15 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.

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9. Interest on the rent deposit, in the amount of \$6.49 is owing to the Tenant for the period from July 1, 2023 to August 18, 2023.

Tenant's evidence

10. The Tenant testified that she moved into the rental unit in August 2021 when she and her partner separated but because he paid the rent, she was unaware of the amount of lawful monthly rent. She stated that he then paid half the rent for a period of time after they separated in lieu of child support.
11. The Tenant testified that communications with the Landlord were very poor, and she was unable to contact anyone for information about the lawful monthly rent.
12. She submitted an N1 Notice of Rent Increase dated October 20, 2022 for an increase effective February 1, 2023 into evidence. It is in the name of Brenda Long, who is a previous tenant in the rental unit.
13. She testified that because she was unsure of the monthly rent after receiving the N1 notice for Brenda Long in October 2022, she withheld the rent for one month to see if she would get a notice telling her how much was owing in order to take that to her Ontario Works case manager for assistance. She said that she did not receive any confirmation about the rent until she received the N4 Notice to end the tenancy for non-payment of rent in March of 2023.
14. She stated that due to a lack of response from the Landlord, she had relied on information provided by Michelle Templeton (MT), the former building superintendent. Her Ontario Works case worker contacted MT about the rent, and beginning September 2022 the Tenant began to receive payments of \$1,000.00 from Ontario Works for housing.
15. Michelle Templeton testified that she was the superintendent from March to November 2022 and attempted to help the Tenant to contact the Landlord's management. She testified that she was told that management would look into the issue, and then she was unaware of what happened after she left the company.
16. The Tenant initially stated that she agreed with all of the payments indicated on the Landlord's ledger, but not with the amount of arrears owing.
17. After a review of the rent ledger provided by the Landlord, the parties agreed that as of September 30, 2022, the Tenant owed \$3,695.00 in rent arrears. The Tenant agreed that she then paid sporadically, both because she was hoping to receive a notice from the Landlord clarifying the amount of monthly rent, and sometimes due to financial issues. She received the N4 notice in March 2023, around the same time that she received the N1 notice of rent increase in the correct name which increased the rent effective July 1, 2023 from \$1,886.00 to \$1,933.15.

Landlord's evidence

18. The Landlord's Legal Representative stated that the current Landlord took possession of the rental complex in November 2021. The acquisition and closing documents were not provided to the new Landlord until May 2022. The Landlord's documents and rent roll at that time still indicated that Brenda Long was the Tenant in the unit, which is why the

October 2022 N1 notice was in her name rather than that of the Tenant. MT confirmed to the Landlord that the current Tenant and her children were living in the unit.

19. The Landlord's Legal Representative stated that the N1 notice in the wrong name was retracted, then she submitted into evidence the next N1 notice which was served, dated March 8, 2023, for an increase effective July 1, 2023 addressed to the correct Tenant. She submitted that if the Tenant had ever been unsure of the lawful monthly rent, there should have been no confusion after this time.
20. The Landlord's Legal Representative confirmed that the online rent payment system does not provide tenants with information about the amount of their monthly rent. She also stated that the ledger submitted into evidence (which was provided to the Tenant) clearly shows the Tenant's payment history.

Analysis

21. There is no dispute that arrears of rent are owing, but it is the quantum of arrears that is in question. The Tenant agrees with the amount owing to September 30, 2022 and that the Landlord's ledger accurately reflects the payments that were made.
22. The Tenant testified that she had difficulty contacting the main office of the Landlord. This was corroborated by the evidence of MT that she attempted to assist the Tenant to contact the office and was told that someone would be in touch with the Tenant in response to her questions. I accept the Tenant's evidence that this did not happen.
23. I also accept the Tenant's testimony that despite receiving rent assistance from Ontario Works in October 2022, she did not make a payment in hopes that this would provoke communication from the Landlord.
24. While it does appear that there was confusion at points in the tenancy, particularly when the Tenant was served with the initial N1 notice in the wrong name, the ledger provided by the Landlord is clear, and the Tenant was in possession of the ledger. The N1 notice issued in March 2023 was in the correct name and indicated both the current rent and the increase which was to take effect in July 2023. The Tenant was also in contact at this point with the Landlord's Legal Representative.
25. The Landlord's Legal Representative suggested to the Tenant that she was financially unable to make some of the payments after March 2023. The Tenant's testimony was forthright, and she agreed that this was the case.

Relief from eviction

26. The Tenant entered a letter from a medical professional into evidence which indicates that the Tenant lives with mental health issues and cares for her 2 young children full time on her own. It states that an eviction would drastically negatively affect her mental health and her children.
27. The Tenant stated that she is committed to preserving the tenancy and intended to contact her Ontario Works case manager and the rent bank for assistance, as she would find it very difficult to find alternative housing. She does not have friends or family in the area to rely on for assistance, and Peterborough is a small community. She also submitted that

her children are aged 4 and 6, just beginning school programs, and have friends in the area.

28. 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 March 1, 2024 pursuant to subsection 83(1)(b) of the Act. This will allow the Tenant sufficient time to explore options to preserve the tenancy, or in the alternative to secure housing for herself and her children.

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** (*less any payments made since the date of the hearing*):
 - \$28,117.84 if the payment is made on or before December 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$30,050.99 if the payment is made on or before January 31, 2024. See Schedule 1 for the calculation of the amount owing.

OR

 - \$31,984.14 if the payment is made on or before February 29, 2024. See Schedule 1 for the calculation of the amount owing.

OR

 - \$33,917.29 if the payment is made on or before March 1, 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 March 1, 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 March 1, 2024.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$17,656.53. 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 \$63.56 per day for the use of the unit starting August 19, 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 March 1, 2024, the Tenant will start to owe interest. This will be simple interest calculated from March 2, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before March 1, 2024, then starting March 2, 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 March 2, 2024.

December 4, 2023

Date Issued

Margo den Haan
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 September 2, 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 <i>(less any payments made since the date of the hearing)</i>	\$31,753.20
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,821.36
Total the Tenant must pay to continue the tenancy <i>(less any payments made since the date of the hearing)</i>	\$28,117.84

A. 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 <i>(less any payments made since the date of the hearing)</i>	\$33,686.35
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,821.36
Total the Tenant must pay to continue the tenancy <i>(less any payments made since the date of the hearing)</i>	\$30,050.99

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before February 29, 2024

Rent Owing To February 29, 2024 <i>(less any payments made since the date of the hearing)</i>	\$35,619.50
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,821.36
Total the Tenant must pay to continue the tenancy <i>(less any payments made since the date of the hearing)</i>	\$31,984.14

C. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before March 1, 2024

Rent Owing To March 31, 2024 <i>(less any payments made since the date of the hearing)</i>	\$37,552.65
Application Filing Fee	\$186.00
NSF Charges	\$0.00

Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,821.36
Total the Tenant must pay to continue the tenancy <i>(less any payments made since the date of the hearing)</i>	\$33,917.29

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

Rent Owing To Hearing Date	\$23,373.68
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,821.36
Less the amount of the last month's rent deposit	- \$1,933.15
Less the amount of the interest on the last month's rent deposit	- \$6.49
Total amount owing to the Landlord	\$17,656.53
Plus daily compensation owing for each day of occupation starting August 19, 2023	\$63.56 (per day)