



Order under Section 69 Residential Tenancies Act, 2006

Citation: Schroeder v Janusas, 2023 ONLTB 78190

Date: 2023-12-01

File Number: LTB-L-025769-23

Kathie Schroeder (the 'Landlord') applied for an order to terminate the tenancy and evict Ashley Janusas (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on November 22, 2023.

The Landlord 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 \$2,050.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$67.40. This amount is calculated as follows: \$2,050.00 x 12, divided by 365 days.
5. The Tenant has paid \$8,600.00 to the Landlord since the application was filed.
6. The rent arrears owing to November 30, 2023 are \$11,900.00. The Tenant acknowledges she does owe rent arrears to the Landlord.
7. The Landlord collected a rent deposit of \$2,050.00 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.
8. Interest on the rent deposit, in the amount of \$72.76 is owing to the Tenant for the period from December 15, 2021 to November 22, 2023.
9. The Landlord submits that she is waiving reimbursement of the filing fee for this application.

10. The next issue for the Board is with respect to relief from eviction.
11. Pursuant to s. 83(2) of the Act, the Board is required to consider “all of the circumstances” to determine whether or not it would be unfair to refuse eviction, delay eviction, or put in place some sort of conditional order. This is called discretionary relief from eviction. For the reasons that follow, I am satisfied it would not be unfair in all of the circumstances to delay eviction until December 15, 2023. I say this for the following reasons.
12. The Landlord requested a standard order for eviction because she has had to use up her savings and investments to pay the mortgage and other expenses associated with the rental unit. The Landlord submits that she is now in a position where she will most likely have to sell the property.
13. The Tenant requests that if she is to vacate the rental unit, she would like one month to move. The Tenant testified that she lost her job at the end of March/early April, 2023 and then had health issues which resulted in surgery in August. The Tenant submits that she has been applying for other jobs, has interviews lined up and also does some “side jobs” for her brother. The Tenant has four children and has no family or friends nearby to assist.
14. The Tenant wishes to preserve her tenancy and proposes a payment plan of paying \$500.00 per month until the arrears have been satisfied. This will take approximately two years to satisfy. After reviewing very basic expenses the Tenant incurs every month, including rent, gas, groceries, cellphones and utilities, she would be left with \$15.00 every month. The Tenant states she is currently unemployed with her source of income being child tax benefits and child support totalling \$3,700.00.
15. The Landlord opposes any payment plan as she cannot trust the Tenant to abide by the payment plan terms. The Landlord submits that it took the Tenant nine months to pay anything at all for rent and if a payment plan is entered into, she believes the Tenant will come up with other reasons to not pay.
16. Given all of the evidence and submissions before me, I am satisfied that it would not be unfair to the Landlord to give the Tenant some additional time to move. The Tenant has four children and has paid some monies towards rent in September and November. The re-payment proposal the Tenant puts forward is not viable, in my view, as it only leaves \$15.00 per month and the Tenant’s expenses she provided were estimates and not a thorough examination of her true expenses. While I accept that the Tenant has encountered difficulties, particularly with her personal and financial circumstances, she has made no attempts to pay rent until recently. This tenancy, in my view, is just not viable any longer and to prolong it would be prejudicial to the Landlord and unfair to the Tenant as the arrears are surmounting. At the hearing, the Tenant requested one month to vacate and she shall be given until December 15, 2023 to move out of the rental unit.
17. 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 December 15, 2023 pursuant to subsection 83(1)(b) of the Act.
18. This order contains all of the reasons within it and no further reasons will be issued.

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:**
 - \$13,950.00 if the payment is made on or before December 15, 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 15, 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 15, 2023.**
5. The Tenant shall also pay the Landlord compensation of \$67.40 per day for the use of the unit starting November 23, 2023 until the date the Tenant moves out of the unit.
6. If the Tenant does not pay the Landlord the full amount owing on or before December 12, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 13, 2023 at 7.00% annually on the balance outstanding.
7. If the unit is not vacated on or before December 15, 2023, then starting December 16, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
8. 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 16, 2023.

December 1, 2023**Date Issued**

Heather Chapple

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 16, 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 15, 2023

Rent Owing To December 31, 2023	\$22,550.00
Application Filing Fee	\$0.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$8,600.00
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	\$13,950.00

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

Rent Owing To Hearing Date	\$19,932.80
Application Filing Fee	\$0.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$8,600.00
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	- \$2,050.00
Less the amount of the interest on the last month's rent deposit	- \$72.76
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	\$9,210.04
Plus daily compensation owing for each day of occupation starting November 23, 2023	\$67.40 (per day)