



Order under Section 69 Residential Tenancies Act, 2006

Citation: Clarence v Meeks, 2023 ONLTB 77238

Date: 2023-11-30

File Number: LTB-L-061168-22

In the matter of: A-216 Station Street Belleville
ON K8N2T3

Between: Scott Clarence Landlords
Rachael Clarence

And

April Meeks Tenant

L1 Application – Non-Payment of Rent

Scott Clarence and Rachael Clarence (the 'Landlords') applied for an order to terminate the tenancy and evict April Meeks (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

L2 Application – Persistent Late Payment of Rent

The Landlords also applied for an order to terminate the tenancy and evict the Tenant because the Tenant has been persistently late in paying her rent. The Landlord also claimed compensation for each day the Tenant remained in the rental unit after the termination date.

These two applications were heard by videoconference on November 15, 2023. Landlord Scott Clarence, and the Landlords' representative, Dara Saunders, attended the hearing. As of 11:18 am, 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:

1. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy. The tenancy between the Landlords and the Tenant is terminated. The Tenant must move out of the rental unit on or before December 11, 2023.

L2 Application – Persistent Late Payment of Rent

2. On October 1, 2022, the Landlords served the Tenant an N8 notice of termination (N8) with a date of termination of June 30, 2023. The notice of termination alleges that the Tenant paid the rent late 13 times over the 13-month period from September 2021 to September 2022. I am satisfied that this N8 was properly served and complies with s. 58(2) of the Act.
3. The Landlords filed an L2 application with the Board on October 20, 2022. I am satisfied that this application complies with s. 69(1) of the Act. The Tenant was in possession of the rental unit on the day of filing, and remains in possession of the rental unit as of the day of this hearing.
4. Daily compensation, the rent deposit, and the Landlords' costs will be considered as part of the Landlords' L1 application.
5. The rent is due on the first day of each month.
6. The Landlords' representative submitted that the Tenant paid the rent late for 13 months over the 13-month period from September 2021 to September 2022. The Landlords submitted a detailed rent ledger as part of the N8 providing specific payment information and payment dates over this period.
7. On the basis of the Landlords' uncontested evidence, I find that the Tenant has persistently failed to pay the rent on the date it was due. The rent was paid late 13 times during the 13-month period from September 2021 to September 2022.
8. After the notice was served, over the 14-month period from October 2022 to November 2023, the Landlords' representative submitted that the Tenant paid the rent late every month over the previous 14 months. The Landlords submitted a rent ledger update sheet that indicated the Tenant paid the rent late every month from October 2022 to November 2023, and did not pay any rent for the months of September 2023 and October 2023.
9. On the basis of the Landlords' uncontested evidence, I find that the Tenant paid the rent late every month over the 14-month period from October 2022 to the date of this hearing.
10. The Landlord testified that he corresponded frequently with the Tenant via text message since the rent payments were paid late; however, the rent payments continued to arrive late or not at all. The Landlord testified further that on October 24, 2023 he offered a payment plan to the Tenant in an effort to receive consistent on-time rent payments, as well as gradual payment of the rent arrears. The Landlord remarked that on October 24, 2023 the Tenant responded favourably to this plan; however, the Tenant never made a single payment according to the plan.

11. The Landlord stated that the late rent payments have increased his financial burden and strained his financial credit to an unacceptable limit.

Relief from Eviction

12. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
13. Over the 27-month period from September 2021 to the date of this hearing the Tenant paid the monthly rent late on 27 occasions. I am satisfied that if the rent is not paid on time the Landlords encounter financial difficulties in paying their own tenancy related expenses on time. I am also satisfied that, given the long and consistent record of late rent payments since September 2021, providing the Tenant with relief from eviction on the condition of on-time rent payments would be prejudicial to the Landlords.
14. The Landlord was not aware of any circumstances that should be considered in a determination of whether to provide the Tenant with eviction relief, nor was the Tenant or the Tenant's representative present at the hearing to provide submissions with respect to the Tenant's relief from eviction. For these reasons, and those provided in paragraph 13 above, it would be unfair to the Landlords to grant the Tenant with eviction relief.
15. As a result, the requested eviction order shall be issued based on the Landlords' L2 application for persistent late payment of rent.

L1 Application – Non-Payment of Rent

16. As an eviction order is being issued based on the Landlords' L2 application, it is not necessary to consider the request for eviction in the Landlords' L1 application. The Tenant will be ordered to pay the rent arrears owing less the last month's rent deposit and interest owing on the deposit pursuant to s. 86, s. 87(1)(a) and s. 106 of the Act.
17. As of the hearing date, the Tenant was still in possession of the rental unit.
18. The lawful rent is \$2,106.00. It is due on the 1st day of each month.
19. Based on the monthly rent, the daily rent/compensation is \$69.24. This amount is calculated as follows: \$2,106.00 x 12, divided by 365 days.
20. The Tenant has paid \$12,739.02 to the Landlords since the application was filed.
21. The rent arrears owing to November 30, 2023 are \$16,331.96.
22. The Landlords incurred costs of \$186.00 for filing both the L1 and L2 applications and are entitled to reimbursement of those costs.

23. The Landlords collected a rent deposit of \$1,855.00 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.
24. Interest on the rent deposit, in the amount of \$71.54 is owing to the Tenant for the period from May 2, 2022 to November 15, 2023.
25. This order contains all of the reasons for the decision within it and no further reasons shall be issued.

It is ordered that:

1. The tenancy between the Landlords and the Tenant is terminated. The Tenant must move out of the rental unit on or before December 11, 2023.
2. The Tenant shall pay to the Landlords \$13,524.02. 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 Landlords owe on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
3. The Tenant shall also pay the Landlords compensation of \$69.24 per day for the use of the unit starting November 16, 2023 until the date the Tenant moves out of the unit.
4. If the Tenant does not pay the Landlords the full amount owing on or before December 11, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 12, 2023 at 7.00% annually on the balance outstanding.
5. If the unit is not vacated on or before December 11, 2023, then starting December 12, 2023, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or after December 12, 2023.

November 30, 2023

Date Issued

Frank Ebner

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 12, 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 as the tenancy is terminated.

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|--|----------------------|
| Rent Owing To Hearing Date | \$28,003.58 |
| Application Filing Fee | \$186.00 |
| NSF Charges | \$0.00 |
| Less the amount the Tenant paid to the Landlord since the application was filed | - \$12,739.02 |
| 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 | - \$1,855.00 |
| Less the amount of the interest on the last month's rent deposit | - \$71.54 |
| 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 | \$13,524.02 |
| Plus daily compensation owing for each day of occupation starting November 16, 2023 | \$69.24 (per day) |

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