



Order under Section 69 Residential Tenancies Act, 2006

Citation: Hughie v Mamann, 2023 ONLTB 75590

Date: 2023-11-29

File Number: LTB-L-044936-23

In the matter of: 139 WATERLOO AVE
NORTH YORK ON M3H3Y7

Between: Toader Hughie Landlord

And

Alden Mamann Tenant

Toader Hughie (the 'Landlord') applied for an order to terminate the tenancy and evict Alden Mamann (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, the Landlord's Legal Representative, Sajjad Najem, 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 \$2,905.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$95.51. This amount is calculated as follows: \$2,905.00 x 12, divided by 365 days.
5. The Tenant has paid \$3,452.00 to the Landlord since the application was filed.
6. The rent arrears owing to November 30, 2023 are \$16,883.00.
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 \$2,800.00 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.
9. Interest on the rent deposit, in the amount of \$275.21 is owing to the Tenant for the period from September 20, 2017 to November 6, 2023.

Section 83 Considerations

10. 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 not be unfair to postpone the eviction until December 31, 2023 pursuant to subsection 83(1)(b) of the Act.

Tenant Submissions – Section 83(2)

11. The Tenant seeks an opportunity to preserve his tenancy. He requested that the Board allow him to continue his tenancy with a 14-month payment plan commencing December 2023 and continuing until the arrears are paid in full. Based on the arrears owing and the application filing fee, the Tenant would be required to pay approximately \$1,220.00 per month, in addition to his monthly rent of \$2,905.00 for a 14-month period.
12. The Tenant testified that he has been a Tenant for six years and that his rent was current all through the pandemic until he injured his shoulder in late March of 2023 and was out of work for approximately six weeks.
13. The Tenant is self-employed renovating commercial restaurants and prior to his injury was averaging between \$7,000.00 to \$8,000.00 in monthly income. When he returned to work after the initial six weeks, he reinjured his shoulder and was advised that he required surgery and that it could take months until the surgery was scheduled. As a result of his inability to work, he took in a roommate that pays him \$1,500.00 a month in rent.
14. The Tenant further testified that since he has dual citizenship between Canada and the United States he discovered that he was eligible for Medicaid for him to have his surgery on October 11, 2023 in the United States. He is currently staying at his late mother's condominium in Florida recovering from the surgery.
15. The Tenant submitted that only himself and his roommate occupy the unit and upon his return to Canada, he would be seeking another roommate to assist financially with the rent.
16. The Tenant submitted that his current sole source of income is the \$1,500.00 that he receives from his roommate. The Tenant could not provide a date of when he would be returning to work and could not provide a monthly income.
17. The Tenant submitted that his monthly expenses including Rent (\$2,905.00), Utilities – including gas, hydro, water, and internet (\$500.00), Car Insurance (\$192.00), Court Ordered Life Insurance (\$105.00) and Food (\$400.00), add up to approximately \$4,102.00.

Landlord Submissions – Section 83(2)

18. The Landlord seeks to terminate the tenancy. The Landlord's Legal Representative submitted that the last payment the Landlord received from the Tenant was in June of 2023 in the amount of \$547.00 despite the Tenant receiving \$1,500.00 from his roommate.

When the Landlord's Legal Representative questioned the Tenant as to where the \$1,500.00 from his roommate went during cross-examination, the Tenant responded with he has other expenses that he had to pay. Additionally, the Landlord's Legal Representative submitted, the Tenant chose to prioritize other expenses rather than his rent.

19. Finally, the Landlord's Legal Representative submitted that the payment plan that the Tenant put forth was unrealistic as the Tenant testified that he has no other monthly income other than the \$1,500.00 he receives from his roommate. The \$1,500.00 he received does not cover the rent let alone the Tenant's other monthly expenses. The Landlord purchased this property as an investment for retirement, is their only rental property, and has now been forced to pay for the mortgage out of their own pocket due to the Tenant's non-payment of rent.
20. I find that the tenancy is unsustainable for the Tenant given his current income and the arrears will likely continue to increase as the Tenant was unable to provide a date for when he would return to work. The Tenant's current income is insufficient to meet the monthly rent obligation, let alone new rent plus a repayment for the arrears. Also, although the Tenant was confident that his source of income would change in the near future when he returned to work, the Tenant did not have a clear idea of how much income he could expect in the future. He could only speak to the income that he received in the past prior to his injury. Given the unknown amount of income, it would not be realistic to impose a repayment plan.
21. Although the standard 11 days was requested by the Landlord's Legal Representative, I am providing an extension until December 31, 2023 for the Tenant to either pay in full to void this order, or to move out. I am mindful of the Tenant's disclosed physical circumstance and the duration of his tenancy and have determined that an extension until the end of December 2023 is fair in the circumstances.
22. All of my reasons for my determination are contained in this Order.

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:**
 - \$17,069.00 if the payment is made on or before November 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$19,974.00 if the payment is made on or before December 31, 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 31, 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 31, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$10,929.85. 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 \$95.51 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 10, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 11, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 31, 2023, then starting January 1, 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 1, 2024.

November 29, 2023
Date Issued

 Jessica Lapkowski
 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 1, 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 November 30, 2023

Rent Owing To November 30, 2023	\$20,335.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,452.00
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	\$17,069.00

B. 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	\$23,240.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,452.00
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	\$19,974.00

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

Rent Owing To Hearing Date	\$18,003.06
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,452.00
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	- \$2,800.00
Less the amount of the interest on the last month's rent deposit	- \$275.21
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	\$11,661.85
Plus daily compensation owing for each day of occupation starting November 7, 2023	\$95.51 (per day)