



Order under Section 69 Residential Tenancies Act, 2006

Citation: Silvercore Properties Inc. v Starcevic, 2023 ONLTB 75942

Date: 2023-11-23

File Number: LTB-L-073648-22

In the matter of: 4, 40 CLEARVIEW HEIGHTS
TORONTO ON M6M2A1

Between: Silvercore Properties Inc. Landlord

And

Drazenko George Starcevic Tenants
Kula Ellison

SILVERCORE PROPERTIES INC. (the 'Landlord') applied for an order to terminate the tenancy and evict Drazenko George Starcevic and Kula Ellison (the 'Tenants') because

- the Tenants did not pay the rent that the Tenants owe (L1 application);
- the Tenants have been persistently late in paying the Tenants' rent (L2 application).

This application was heard by videoconference on November 9, 2023.

The Landlord's Agent Axel Pohlman, the Landlord's Legal Representative R. Gibbons and the Tenants attended the hearing. The Landlord's witness Claire Arteta was also present.

Determinations:

1. During the hearing the Tenants engaged in unreasonable and abusive conduct directed at the Board, including yelling, using abusive language, disrupting in between and not answering the questions asked. This type of conduct is unacceptable. The Tenants may be ordered to pay costs to the Board if this type of conduct reoccurs at a future hearing.

L1 Application – Non-Payment of Rent

2. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants 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.
3. As of the hearing date, the Tenants were still in possession of the rental unit.
4. The lawful rent is \$1,025.23. It is due on the 1st day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$33.71. This amount is calculated as follows: \$1,025.23 x 12, divided by 365 days.

6. The Tenants has paid \$10,450.00 to the Landlord since the application was filed.
7. The rent arrears owing to November 30, 2023 are \$1,581.53.
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 \$1,000.23 from the Tenants 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 \$21.44 is owing to the Tenants for the period from January 1, 2023 to November 9, 2023.
11. The Landlord's Legal Representative stated that the Tenants have continued to pay only \$950.00 per month which was their initial rent when they started the tenancy on June 1, 2018, but the rent has increased since then as a result of the Notices of Rent Increases (N1) given to the Tenants.
12. The Landlord's witness Claire Arteta works in the Head Office of the Landlord. She testified that she has the records of all the N1 notices served on the Tenants over the course of the tenancy. The earlier notices were sent by another employee who has since retired but the last one served on Feb 17, 2023 deemed served on February 22, 2023 was mailed out by her and increased the rent from \$1,000.23 to \$1025.23. The effective date of rent increase for all the N1s is June 1 of that year and June 1, 2023 for this year. She also testified that the Landlord always mails the N1 notices to the tenants.
13. The Tenants claimed they have not received any of the rent increase notices. They blamed one of the employees Daryl at the residential complex for stealing their mail without giving any motive or evidence of the same. The Tenants did not give me any other reasoning why they have not been paying the increased rent.
14. I do find based on the testimony of the Landlord's witness that multiple N1 notices have been sent to the Tenants via mail over the years. I find it very unlikely that the Tenants received none of these notices due to mail theft by an employee of the Landlord. The Tenants also could not prove to me why an employee would open their locked mailbox and take out their mail. The last N1 notice was sent on February 17, 2023 deemed served on February 22, 2023 with the effective date of increase as June 1, 2023. This is in compliance with the requirements under the Act for serving a NORI.
15. The Tenants repeatedly questioned the Landlord's authority to act as a Landlord since the building is owned by a numbered company and the Landlord is a property manager. They also questioned the authority of the Board to adjudicate this matter since the residential complex is a commercial building worth millions and the Board has no authority to do so since the Board is one a residential residency tribunal and its right to hold hearings was revoked under the COVID-19 emergency measures.
16. The definition of "landlord" in section 2(1) of the *Residential Tenancies Act, 2006* ("Act") is not restricted to owners, but also includes "any other person who permits occupancy of a rental unit". I am satisfied that the Landlord named in this application meets this definition. The Tenants have signed a lease agreement with the Landlord and in their own uncontested testimony they have been paying rent to them since the start of the tenancy.

17. The Tenants' occupy a "rental unit" as that term is defined in section 2(1) of the Act, and therefore falls within the Board's jurisdiction. Section 168(2) of the Act states that the Board has exclusive jurisdiction to determine all applications under this Act and with respect to all matters in which jurisdiction is conferred on it by this Act.
18. The Tenants also stated that they have been before the Board before, and the Landlord never claimed any money then so they should not ask for it now. The Tenant claimed that in order TNT-24423-20 issued on May 21, 2021 the Board dismissed the Landlord's application since they are not the Landlords. Having reviewed that order I find that the Landlord's application was dismissed because the Landlord did not prove that the Tenants seriously impaired a person's safety, have used the rental unit in a manner inconsistent with residential use, or have substantially interfered with a person's reasonable enjoyment of the residential complex or other lawful right, privilege or interest, and not because the Landlord is not a "Landlord" within the meaning of the Act. Also, at the hearing for TNT-24423-20, the Tenants did not assert that the Landlord is not their Landlord, or that the Landlord's claim for rent arrears should be dismissed.

L2 Application – Persistent Late Payment of Rent

19. The Tenants have persistently failed to pay the rent on the date it was due. The rent is due on the 1st day of each month. The rent has been paid late 12 times in the past 12 months.
20. The Tenants have made most of the rent payments in the last week of each month. The N8 notice covers the period from December 2021 till November 2022 and there was not a single month the rent was paid in time. The pattern has continued since the N8 was served. The Tenants either pay late or pay partially.
21. The Tenant Drazenko George Starcevic testified that the other Tenant's rent portion was paid directly by ODSP and his half he gets a money order/cheque ready, and the staff come to the door to collect it. So, according to the Tenants, the Landlord is responsible for the delay.
22. The Landlord's Agent testified that the Tenant prefers to pay via cheque/ money order, and he advises them when to come collect the cheque and at what time. The staff has always accommodated the Tenant's request since they can be difficult to deal with if the staff does not comply. The other Tenant pays directly through ODSP.
23. I find that the Tenants have persistently failed to pay the rent by 1st day of each month as required by the lease agreement over the last two years. I find that the Landlord has proved that the Tenants have paid their rent late persistently.

Relief from eviction

24. 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.
25. The Tenants did not disclose any personal circumstances. Their focus was to get the application dismissed on grounds that were not relevant for the purpose of this order

26. The Tenants have continued made the payments regularly and the amount owing is just the difference in the increased rent and the initial rent. I am willing to give the Tenants extra time to pay the Landlord the rent arrears.

It is ordered that:

L1 Application – Non-Payment of Rent

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$1,767.53 if the payment is made on or before November 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$2,792.76 if the payment is made on or before December 15, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have 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 Tenants may only make this motion once during the tenancy.
 4. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before December 15, 2023**
 5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$24.02. 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 Landlord owes on the rent deposit are deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
 6. The Tenants shall also pay the Landlord compensation of \$33.71 per day for the use of the unit starting November 10, 2023 until the date the Tenants move out of the unit.
 7. If the Tenants do not pay the Landlord the full amount owing on or before December 15, 2023, the Tenants will start to owe interest. This will be simple interest calculated from December 16, 2023 at 7.00% annually on the balance outstanding.
 8. 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.
 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 December 16, 2023.

L2 Application – Persistent Late Payment of Rent

10. If the Tenants void the L1 portion of the order in accordance with paragraph two above, the tenancy shall continue on the following terms.
11. The Tenants shall pay the Landlord the monthly rent due on or before the first day of the month for the period January 1, 2024 to December 1, 2024.
12. If the Tenants fail to make any of the payments in paragraph 11 above, the Landlord may apply under section 78 of the Act, within 30 days of the breach and without notice to the Tenant, for an order terminating the tenancy and evicting the Tenant.

November 23, 2023

Date Issued

Sheena Brar

Member, Landlord and Tenants 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 5, 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**

**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	\$12,031.53
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$10,450.00
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	\$1,767.53

B. 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	\$13,056.76
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$10,450.00
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	\$2,792.76

C. Amount the Tenants must pay since the tenancy is terminated

Rent Owing To Hearing Date	\$11,309.69
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$10,450.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$1,000.23

Less the amount of the interest on the last month's rent deposit	- \$21.44
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total amount owing to the Landlord	\$24.02
Plus daily compensation owing for each day of occupation starting November 10, 2023	\$33.71 (per day)