



Order under Section 69 Residential Tenancies Act, 2006

Citation: Troncone v Chiuccariello, 2023 ONLTB 75617

Date: 2023-11-23

File Number: LTB-L-051058-23

In the matter of: A, 1092 ST CLAIR AVE W
TORONTO ON M6E1A7

Between: Matthew Troncone Landlord

And

Lorenzo Chiuccariello Tenant

Matthew Troncone (the 'Landlord') applied for an order to terminate the tenancy and evict Lorenzo Chiuccariello (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on November 8, 2023.

The Landlord, the Landlord's Representative, Sergey Bogdanov, 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 \$1,500.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$49.32. This amount is calculated as follows: $\$1,500.00 \times 12$, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The Landlord's evidence is that the rent arrears owing to November 30, 2023 are \$27,436.64.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.
9. The Tenant does not agree with the amount of arrears claimed by the Landlord.

10. The Tenant testified he pays cash to the Landlord and payments are given to the Landlord, the Landlord's secretary, or left in the Landlord's secured mailbox. He submitted that he has always paid with cash in the past and the Landlord has not provided rent receipts.
11. For the reasons that follow, based on the totality of the evidence before me, I find on a balance of probabilities that the Tenant owes the Landlord \$27,436.64 in arrears.
12. While a landlord bears the burden of establishing rent arrears in an application such as this, the tenant typically bears the burden of establishing that a particular payment or payments were made if the landlord gives evidence that they were not. The Tenant did not provide any evidence to support his testimony about the disputed payments. There was no evidence that the Tenant made efforts to contact the Landlord regarding the missing payments after receiving the N4 Notice or L1 application. When questioned as to why there were no supporting bank statements, the Tenant advised he was not able to gather them in time as the occupant vacated a year ago. The occupant would pay the Tenant her portion in cash and the Tenant would pay the Landlord in cash.
13. The Landlord testified that he did not receive any cash payments from the Tenant that he did not account for in the ledger submitted into evidence. The Landlord submitted that the Tenant had ample opportunity to contact him or pay him as his dental office is below the rental unit and that he is onsite twice a week, and he has staff at the office 4 days a week.
14. The Tenant testified he paid the Landlord the rent for October 2023 in cash on or about October 1, 2023 by leaving the payment in the Landlord's mailbox. I find it unlikely the Tenant would continue to pay the Landlord cash in this manner knowing that the Landlord has filed a L1 application alleging non-payment. Given that the Board mailed the Tenant the Notice of Hearing and L1 application package on August 10, 2023, I find it unreasonable that the Tenant was not able to provide bank statements for the recent months he claims to have paid the Landlord.
15. After orally announcing my decision to reserve on the finding of the arrears, the Tenant proposed a payment plan to preserve his tenancy in the event I determine there are arrears.

Section 83 Considerations

16. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
17. The Tenant seeks an opportunity to preserve the tenancy and proposes paying the new rent that comes due and \$3,200.00 each month towards the arrears until the arrears are paid up.
18. The Tenant lives alone in the rental unit. The Tenant testified he would like to stay in the unit as he has not been able to find alternative housing and that the location of the rental unit is convenient for his employment.

19. The Landlord opposed the Tenant's proposed payment plan. The arrears are substantial, and the Landlord is a non-corporate Landlord. The Landlord submitted that the Tenant has not made any good faith payment in the last 5 months and previous payment negotiations have failed.
20. Based on the Tenant's testimony, I do not find his proposed payment plan viable based on his current income. The Tenant makes \$4,000.00 a month and the rent is \$1,500.00. Even if he had no other expenses, the Tenant is unable to pay an additional \$3,200.00 a month to the Landlord.
21. While the Tenant testified that his income would increase as he can work more hours or get a roommate, there is no evidence before me that his workload will increase in the near future or that he will be successful in getting a roommate in the near future. The Tenant's current income is insufficient to comply with the proposed plan.
22. In the event I deny the proposed payment plan, the Tenant requested delaying eviction until the spring of 2024. Given that the arrears are substantial, and no payments have been paid to the Landlord since May 2023, I find that a standard eviction order would be fair having considered all the circumstances of both parties.

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:**
 - \$27,622.64 if the payment is made on or before November 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$29,122.64 if the payment is made on or before December 4, 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 4, 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 4, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$26,517.20. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$49.32 per day for the use of the unit starting November 9, 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 4, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 5, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 4, 2023, then starting December 5, 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 5, 2023.

November 23, 2023

Date Issued

Vicky Liu

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 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

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	\$27,436.64
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	\$27,622.64

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before December 4, 2023

Rent Owing To December 31, 2023	\$28,936.64
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	\$29,122.64

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

Rent Owing To Hearing Date	\$26,331.20
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	- \$0.00
Less the amount of the interest on the last month's rent deposit	- \$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 amount owing to the Landlord	\$26,517.20
Plus daily compensation owing for each day of occupation starting November 9, 2023	\$49.32 (per day)

2023 ONLTB 75617 (CanLII)