



Order under Section 69 Residential Tenancies Act, 2006

Citation: KENORA DISTRICT SERVICES BOARD v Thunder, 2023 ONLTB 76995

Date: 2023-11-22

File Number: LTB-L-062555-22

In the matter of: 41B SEVENTH AVE
SIOUX LOOKOUT ON P8T1H6

Between: KENORA DISTRICT SERVICES BOARD Landlord

And

Bethany Thunder Tenant

KENORA DISTRICT SERVICES BOARD (the 'Landlord') applied for an order to terminate the tenancy and evict Bethany Thunder (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's legal agent, L. Shields, and the Tenant attended the hearing.

Preliminary Issue:

1. The Tenant requested to raise issues in the tenancy pursuant to section 82 of the *Residential Tenancies Act, 2006* (the 'Act'). The Tenant submitted that she did not send a list describing these issues or any evidence to the Landlord or filed them with the Board. The Tenant received the Notice of Hearing (NOH) in June 2023.
2. Pursuant to section 82 of the Act, a tenant is permitted to raise any issue that could be the subject of an application if the Tenant complies with disclosure requirements or provides an explanation satisfactory to the Board explaining why the Tenant could not comply.
3. Section 82(2) requires a tenant to give advance notice to the landlord of the tenant's intent to raise the issue at the hearing and this notice shall be in writing. This notice, along with any evidence and submissions should be filed and served at least 7 days before the hearing. The Board's records show that notice of these issues nor supporting evidence were filed. The Landlord has not received notice of any issues or evidence. I note that the Tenant received the NOH in June 2023. The Notice of Hearing that the Tenant would have received is accompanied by documents, one of which includes a blank form that the Tenant can complete regarding maintenance or other Tenant issues. The Tenant ought to have known her disclosure obligations to raise section 82 issues. Therefore, I am not satisfied with the Tenant's reason for failing to comply. In addition, I find it would be procedurally unfair to allow the hearing to proceed on these issues. As such, the request was denied.

Determinations:

4. 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.
5. As of the hearing date, the Tenant was still in possession of the rental unit.
6. The lawful rent is \$1,007.00. It is due on the 1st day of each month.
7. Based on the Monthly rent, the daily rent/compensation is \$33.11. This amount is calculated as follows: \$1,007.00 x 12, divided by 365 days.
8. The Tenant has not made any payments since the application was filed.
9. The rent arrears owing to November 30, 2023 are \$20,846.00.
10. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
11. There is no last month's rent deposit.
12. 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.
13. The Tenant submitted that she does not have the money to pay the rent. She stated she applied for support through Jordan's Principle, and she has not heard back. She submitted that she requires six months to vacate. She has two children residing with her, aged 16 and 12. She has resided in the rental unit for six years.
14. In consideration of the length of tenancy and the Tenant's children, I find it would not be unfair to postpone termination of the tenancy. A longer delay shall not be granted as the arrears are substantial and the Tenant has demonstrated she is unable to pay the rent. The extended termination date will provide the Tenant with some time to organize her move.

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:**
 - \$21,032.00 if the payment is made on or before November 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$22,039.00 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 \$20,223.66. 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 \$33.11 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 3, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 4, 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 22, 2023

Date Issued

Camille Tancioco

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	\$20,846.00
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	\$21,032.00

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	\$21,853.00
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	\$22,039.00

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

Rent Owing To Hearing Date	\$20,037.66
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	\$20,223.66
Plus daily compensation owing for each day of occupation starting November 7, 2023	\$33.11 (per day)