



Order under Section 69 of the Residential Tenancies Act, 2006

Citation: Malouin v Thomson, 2023 ONLTB 71961

Date: 2023-11-17

File Number: LTB-L-042709-23

In the matter of: Unit # 6, 498 CALEB STREET
WINCHESTER ON K0C2K0

Between: David Malouin Landlord

And

James Thomson Tenant

David Malouin (the 'Landlord') applied for an order to terminate the tenancy and evict James Thomson (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 23, 2023.

The Landlord 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 \$768.75. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$25.27. This amount is calculated as follows: \$768.75 x 12, divided by 365 days.
5. The Tenant has paid \$3,650.00 to the Landlord since the application was filed.
6. The rent arrears owing to October 31, 2023 are \$995.00.
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 \$750.00 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 \$30.47 is owing to the Tenant for the period from September 1, 2021 to October 23, 2023.
10. We are satisfied that the Landlord met their obligation to attempt to negotiate a repayment plan pursuant to section 83(6) of the Residential Tenancies Act, 2006 (the 'Act') based on the submissions made by the Landlord and the Tenant.
11. Section 83(2) of the Act requires us to consider all of the circumstances of all the parties, and to determine whether to grant, delay, or deny an eviction. On this issue, the Landlord submitted that he is a small Landlord but would not be opposed to postpone the eviction to give the Tenant more time to either seek other accommodations or pay the balance owing.
12. The Tenant testified that the reason he became behind in his rent was because he lost his job and is waiting for a past claim through Employment Insurance to be approved. The Tenant requested a repayment plan where the arrears would be paid in full on or before December 31, 2023 in order for his Employment Insurance claim to be processed.
13. The Tenant testified that he is currently unemployed but is expected to collect \$1,100.00 bi-weekly as a result of his Employment Insurance claim. The Tenant did not provide any supporting evidence to substantiate this income and indicated that the amount had not been confirmed as of the date of the hearing.
14. We 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 31, 2023 pursuant to subsection 83(1)(b) of the Act. The reason that we are ordering a postponed eviction is because the Landlord did not oppose a postponed termination date, to give the Tenant the opportunity to void the order by the end of this year. As the Tenant is currently unemployed, we could not be confident that a conditional order with a repayment plan would be affordable or realistic in the circumstances. The Tenant indicated that he is waiting for a payment from Employment Insurance. We find that postponing the eviction until December 31, 2023, would give the Tenant a fair opportunity to secure funds to void the order or move out of the unit.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.

Pay and Stay Options

2. The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:
 - \$1,949.75 if the payment is made on or before November 30, 2023. See Schedule 1 Chart A for the calculation of the amount owing.

OR

 - \$2,718.50 if the payment is made after November 30, 2023 but on or before December 31, 2023. See Schedule 1 Chart B 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.

Pay and Go Option

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 \$212.99. 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 Chart C for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$25.27 per day for the use of the unit starting October 24, 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 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 1, 2024 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 17, 2023

Date Issued

Jessica Lapkowski
Member, Landlord and Tenant Board

Michelle Tan
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

Pay and Stay Options

- 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	\$5,413.75
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,650.00
Total the Tenant must pay to continue the tenancy	\$1,949.75

- B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made after November 30, 2023 but on or before December 31, 2023

Rent Owing To December 31, 2023	\$6,182.50
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,650.00
Total the Tenant must pay to continue the tenancy	\$2,718.50

Pay and Go Option

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

Rent Owing To Hearing Date (October 23, 2023)	\$4,457.46
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,650.00
Less the amount of the last month's rent deposit	- \$750.00
Less the amount of the interest on the last month's rent deposit	- \$30.47
Total amount owing to the Landlord	\$212.99
Plus daily compensation owing for each day of occupation starting October 24, 2023	\$25.27 (per day)