



Order under Section 69 Residential Tenancies Act, 2006

Citation: Rubino v Ladoucer, 2023 ONLTB 74153

Date: 2023-11-14

File Number:
LTB-L-047595-23

In the matter of: 26 MCBRIDE ST
TIMMINS ON P4R1N1

Between: Robert Rubino Landlord

And

Adam Ladoucer Tenant

Robert Rubino (the 'Landlord') applied for an order to terminate the tenancy and evict Adam Ladoucer (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 26, 2023.

The Landlord's legal representative, Caryn Smith, and the Tenant's spouse, Ashely Ladoucer, attended the hearing.

Determinations:

Preliminary Issue

1. Based on the Landlord's hearing update sheet, the outstanding arrears for the period ending October 31, 2023, are \$22,712.50.
2. However, the Tenant filed an application for consumer protection ('bankruptcy') several months prior to the hearing. At the hearing, the Tenant's spouse, 'AL', submitted documentation which confirms that the date the Tenant filed for bankruptcy protection was July 27, 2023.
3. As the Landlord served the notice of termination on May 30, 2023, which is prior to the date the Tenant filed for bankruptcy, the notice is valid as it accurately claims the

outstanding arrears as they were known at the time and there was no stay of proceedings when the notice was served. As the notice of termination is valid, this means that the Landlord is permitted to seek an order to terminate the tenancy and evict the Tenant.

4. However, pursuant to the principles outlined in *Edward v. Niagara Neighbourhood Housing Co-Operative Inc.*, 2006 CanLII 16485, the outstanding arrears prior to July 27, 2023, are wiped out. This means the Landlord's application must be amended to reflect the arrears that became due after July 27, 2023. Based on the calculations that I conducted at the hearing, the outstanding arrears for the period ending October 31, 2023, are \$4,995.76. The Landlord's legal representative understood these calculations and agreed with them at the hearing. The application was therefore amended at the hearing to reflect the decreased amount of outstanding arrears.

The Application for Non-Payment of Rent

5. 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.
6. As of the hearing date, the Tenant was still in possession of the rental unit.
7. The lawful rent is \$1,537.50. It is due on the 1st day of each month.
8. Based on the Monthly rent, the daily rent/compensation is \$50.55. This amount is calculated as follows: $\$1,537.50 \times 12$, divided by 365 days.
9. The rent arrears owing to October 31, 2023, are \$4,995.76.
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'). In particular, I have considered that the outstanding arrears are now considerably lower in light of the Tenant's application for bankruptcy protection. I have also considered that the Tenant became recently employed at a very well-paying full-time job. At the hearing, AL submitted documentation which confirms that the Tenant is currently employed and is making a base salary, as well as significant amounts in overtime pay, production bonus pay and other incentives. Also at the hearing, I conducted a detailed analysis of the Tenant's monthly income and expenses. Based on AL's testimony and the supporting documentation as well as my analysis of the Tenant's monthly income and expenses, I am satisfied that the Tenant is financially able to pay the monthly rent in full and on time while also paying the outstanding arrears by December 31, 2023. I therefore find that it would not be unfair to postpone the eviction until December 31, 2023, pursuant to subsection 83(1)(b) of the Act.

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:**
 - \$6,719.26 if the payment is made on or before November 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$8,256.76 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 \$4,958.56. 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 \$50.55 per day for the use of the unit starting October 27, 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 November 25, 2023, the Tenant will start to owe interest. This will be simple interest calculated from November 26, 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 14, 2023

Date Issued

Laura Hartslief

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	\$24,250.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount of arrears that are wiped out due to the Tenant filing for bankruptcy	- \$17,716.74
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	\$6,719.26

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	\$25,787.50
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount of arrears that are wiped out due to the Tenant filing for bankruptcy	- \$17,716.74
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	\$8,256.76

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

Rent Owing To Hearing Date	\$22,489.30
Application Filing Fee	\$186.00
NSF Charges	\$0.00

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Less the amount of arrears that are wiped out due to the Tenant filing for bankruptcy	- \$17,716.74
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	\$4,958.56
Plus daily compensation owing for each day of occupation starting October 27, 2023	\$50.55 (per day)