



Order under Section 69 Residential Tenancies Act, 2006

Citation: Maggio v Demartino, 2023 ONLTB 75192

Date: 2023-11-10

File Number: LTB-L-033829-22

In the matter of: side unit unit 3, 273 KENILWORTH AVE N
Hamilton ON L8H4S8

Between: Richard John Maggio Landlord

And

Felice Demartino Tenant

Richard John Maggio (the 'Landlord') applied for an order to terminate the tenancy and evict Felice Demartino (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes and because the Landlord wants to demolish the rental unit, repair it or convert it to another use.

This application was heard by videoconference on May 18, 2023.

Only the Landlord attended the hearing.

As of 9:30 a.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence. *L2 application*

Determinations:

1. The Landlord served the Tenant with a valid Notice to End Tenancy to Demolish the Rental Unit, Repair it or Convert it to another use (N13 notice).
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The Landlord provided sufficient uncontested evidence to show the unit will be converted back to it's original purpose which is a commercial unit.
4. A property with fewer than five residential units under Section 52(2) of *the Residential Tenancy Act, 2006* (the 'Act') requires *A landlord shall compensate a tenant in an amount equal to one month's rent or offer the tenant another rental unit acceptable to the tenant.*

5. In evidence submitted to the Board was the Landlord would provide \$2000.00 for moving out of the unit as “cash for keys”. There is no evidence the required financial compensation of one month’s rent was provided to the Tenant before the termination date in the N13 notice.
6. In evidence submitted to the Board a company known as “Ready Home Buyers” could help find the Tenant with “a new place temporarily”. Although I believe the Landlord to have good intentions, with no specific rental unit or address provided to the Tenant, there is no way to determine if the Tenant would find this to be an acceptable rental unit.
7. As per paragraph 5 and 6, I find the Landlord to not be in compliance with the Act and thus the L2 portion of this application is dismissed.

L1 application

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 \$500.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$16.44. This amount is calculated as follows: \$500.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to May 31, 2023 are \$6,000.00.
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. 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.

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:**

- \$9,186.00 if the payment is made on or before November 21, 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 November 21, 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 November 21, 2023**
 5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$5,981.92. 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 \$16.44 per day for the use of the unit starting May 19, 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 21, 2023, the Tenant will start to owe interest. This will be simple interest calculated from November 22, 2023 at 7.00% annually on the balance outstanding.
 8. If the unit is not vacated on or before November 21, 2023, then starting November 22, 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 November 22, 2023.

November 10, 2023

Date Issued

André-Paul Baillargeon-Smith

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 May 22, 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 21, 2023

Rent Owing To November 30, 2023	\$9,000.00
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	\$9,186.00

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

Rent Owing To Hearing Date	\$5,795.92
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	\$5,981.92
Plus daily compensation owing for each day of occupation starting May 19, 2023	\$16.44 (per day)