



Order under Section 69 Residential Tenancies Act, 2006

Citation: Giannunzio v Ross, 2023 ONLTB 71716

Date: 2023-10-31

File Number: LTB-L-045403-23

In the matter of: UPPER UNIT, 300 ELM ST S
TIMMINS ON P4N1X2

Between: Delia Giannunzio Landlord

And

Adrienne Ross Tenant

Delia Giannunzio (the 'Landlord') applied for an order to terminate the tenancy and evict Adrienne Ross (the 'Tenant') because

- the Tenant did not pay the rent that the Tenant owes;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises;
- the Tenant has been persistently late in paying the Tenant's rent.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

Delia Giannunzio (the 'Landlord') also applied for an order requiring Adrienne Ross (the 'Tenant') to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

This application was heard by videoconference on October 24, 2023.

Only the Landlord's Public Guardian, Eric Pelletier and the Landlord's Representative, A. Gravelle attended the hearing.

The Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. The Landlord's legal Representative also reminded the Tenant of the hearing by mailing a copy of the Notice of hearing and their disclosure evidence to the Tenant on October 10, 2023 and followed up with an email reminder on October 17, 2023 of which the Tenant responded. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

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 \$700.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$23.01. This amount is calculated as follows: \$700.00 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 October 31 are \$6,750.00.
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.

L2 Application :

9. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the application for eviction is granted.
10. On May 15, 2023, the Landlord gave the Tenant an N8 notice of termination identifying the dates rent was paid late between June 2022 and May 2023.
11. I find the Tenant has persistently failed to pay the rent on the date it was due. The rent is due on the first day of each month. The rent has been paid late 8 times between June 1, 2022 to January 2023 and by virtue of non-payment February to May 2023 is also considered late. Subsequent to the N8 Notice being served, June to October 2023 rent charges, by virtue of non payment, are also considered late. The Tenant's actions to pay rent on when rent is due has not changed.

N5 Notice

12. On May 15, 2023, the Landlord gave the Tenant an N5 notice of termination with a termination date of June 11, 2023. The Landlord provided no proof that the Tenant entered the Landlord's basement unit within the seven day voiding period.

Section 89 -Damage

13. The Landlord's witness testified he was told the Tenant put a jean jacket over the exhaust pipes situated on the exterior wall of the house causing the motor on the furnace to blow on February 23, 2023. The Landlord provided a photograph of the jean jacket that covered the exhaust and a photograph of the melted valve that was removed from the furnace taken on February 23, 2023 which required repairs.

14. Based on the best evidence before me, I find the Tenant, another occupant of the rental unit or a person whom the Tenant permitted in the residential complex negligently caused undue damage to the rental unit or residential complex.
15. The Landlord incurred reasonable costs of \$711.90 to repair the damage which was supported by an invoice.

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'), and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
17. Subsequent to the N4 Notice and N8 Notice being issued the Tenant has made no payments towards rent after January 2023, and did not correct her behaviour to pay rent on time. The Tenant has not attended the hearing to make submissions to preserve this tenancy and given the Tenant's payment history, terminating this tenancy is reasonable.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated on or before November 11, 2023.
2. The Tenant shall pay to the Landlord \$7,500.23. This amount includes rent arrears owing up to the date of the hearing, the cost of filing the application and damage. See Schedule 1 for the calculation of the amount owing.
3. The Tenant shall also pay the Landlord compensation of \$23.01 per day for the use of the unit starting October 25, 2023 until the date the Tenant moves out of the unit.
4. If the Tenant does not pay the Landlord the full amount owing on or before November 11, 2023, the Tenant will start to owe interest. This will be simple interest calculated from November 12, 2023 at 7.00% annually on the balance outstanding.
5. If the unit is not vacated on or before November 11, 2023, then starting November 12, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. 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 12, 2023.

October 31, 2023

Date Issued

Sandra Macchione

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 12, 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 if the tenancy is terminated

Rent Owing To Hearing Date	\$6,602.33
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Damage	\$711.90
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	\$7,500.23
Plus daily compensation owing for each day of occupation starting October 25, 2023	\$23.01 (per day)

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