



Order under Section 69 Residential Tenancies Act, 2006

Citation: Al-Dajani v Mcdlaughlin, 2023 ONLTB 70849

Date: 2023-10-31

File Number: LTB-L-040174-23

In the matter of: 1, 27 SNOWDON AVE
SUDBURY ON P3C4N6

Between: Haytham Al-Dajani Landlord

And

Raymond Mcdlaughlin Tenants
Sandra Leclair

Haytham Al-Dajani (the 'Landlord') applied for an order to terminate the tenancy and evict Raymond Mcdlaughlin and Sandra Leclair (the 'Tenants') because the Tenants did not pay the rent that the Tenants owes.

This application was heard by videoconference on October 11, 2023.

The Landlord, the Landlord's representative, Carly C Harris and the Tenants attended the hearing.

Determinations:

The Board's Monetary Limit

1. The amount of arrears claimed by the Landlord exceeds the Board's \$35,000.00 monetary jurisdiction as set out in s. 207 of the *Residential Tenancies Act, 2006*. The Landlord was informed that pursuant to subsection 207(1) of the 'Act' the monetary jurisdiction of the Board is \$35,000.00.
2. The Landlord acknowledged the Board's monetary limit and submitted that the Landlord wished to proceed with the application anyway.
3. Subsections 207(1), (2) and (3) states as follows,
 1. The Board may, where it otherwise has the jurisdiction, order the payment to any given person of an amount of money up to the greater of \$35,000 and the monetary jurisdiction of the Small Claims Court.
 2. A person entitled to apply under this Act but whose claim exceeds the Board's monetary jurisdiction may commence a proceeding in any court of competent jurisdiction for an order requiring the payment of that sum and, if such a proceeding

is commenced, the court may exercise any powers that the Board could have exercised if the proceeding had been before the Board and within its monetary jurisdiction

3. If a party makes a claim in an application for payment of a sum equal to or less than the Board's monetary jurisdiction, all rights of the party in excess of the Board's monetary jurisdiction are extinguished once the Board issues its order
4. The Landlord's representative indicated they understood the implications and acknowledged that the amount exceeding the Board's jurisdiction would be extinguished by this order pursuant to subsection 207(3) of the Act and instructed the Board they wished to proceed with the application.

Amending the Application

5. At the hearing on the L1 application, the Landlord listed the last period of the arrears as May 19, 2023. The Landlord's representative confirmed that end date of the rental period is the end of the month which would take the application to May 31, 2023.
6. Rule 15.4 of the Board's Rules of Procedure provides me with the discretion to amend an application at the hearing if satisfied that the amendment is appropriate, would not prejudice any party and is consistent with a fair and expeditious proceeding. In this case, I find that amended the last date of the rental period does not prejudice any party as there was no change to the amount owing only the date.
7. Consequently, the application has been amended to reflect the last date of the rental period being May 31, 2023.

L1 Application

8. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants 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.
9. As of the hearing date, the Tenants were still in possession of the rental unit.
10. The lawful rent is \$2,000.00. It is due on the 1st day of each month.
11. Based on the Monthly rent, the daily rent/compensation is \$65.75. This amount is calculated as follows: \$2,000.00 x 12, divided by 365 days.
12. The Tenants have not made any payments since the application was filed.
13. The rent arrears owing to October 31, 2023 are \$35,500.00.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

15. The Landlord collected a rent deposit of \$2,000.00 from the Tenants 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.
16. Interest on the rent deposit, in the amount of \$19.86 is owing to the Tenants for the period from May 20, 2023 to October 11, 2023.

Relief from Eviction

17. 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 Tenants and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
18. The Landlord sought an eviction order as the arrears were described as substantial with a no payments made by the Tenants since the application was filed.
19. The Tenants testified that they stopped paying the rent due to medical issues and job loss in the last 2 years. The Tenant, Raymond Mcdlaughlin testified that he had medical issues which led to job loss in the last 2 years and has been unable to work full time. He was previously employed at a roofing company when he started having seizures. He did not have access to short term or long-term disability payments until summer of 2022. Despite having access to disability payments, he did not make any payments toward the arrears. The Tenant is currently in the process of filing for OSDP.
20. The Tenant, Sandra Leclair testified that she was employed at Mitsubishi as a cleaner and lost her in job in 2022 and was on EI benefits. She has been looking for full time work but has not secured anything since 2022. Despite having access to employment insurance payments, she did not make any payments toward the arrears. The Tenant also testified that she has a cheque coming in the amount of \$40,000.00 from her tax returns over the last few years. She anticipates obtaining information about this in the next week.
21. The Tenants confirmed that their income currently comes from Ontario Works and is approximately \$1,000.00 per month.
22. There are substantial rent arrears owing with no realistic plan for how to pay it back. Therefore, I find there is no realistic way to impose a payment plan since there is no evidence supporting how any repayment plan could be satisfied. The Tenants testified that they would need 6 months to find a new place to live if eviction were granted.
23. I find it would be unfair to grant the lengthy delay the Tenants requested as there is limited income and unsubstantiated income from a tax return which suggest there is no viable way for the Tenants to pay the rent or the arrears in a reasonable amount of time.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants voids this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord:**
 - \$34,686 if the payment is made on or before October 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$36,686.00 if the payment is made on or before November 11, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after November 11, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
 4. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before November 11, 2023**
 5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$31,389.39. 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 Tenants. See Schedule 1 for the calculation of the amount owing.
 6. The Tenants shall also pay the Landlord compensation of \$65.75 per day for the use of the unit starting October 12, 2023 until the date the Tenants moves out of the unit.
 7. If the Tenants do not pay the Landlord the full amount owing on or before November 11, 2023, the Tenants will start to owe interest. This will be simple interest calculated from November 12, 2023 at 7.00% annually on the balance outstanding.
 8. 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.
 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 12, 2023.

October 31, 2023
Date Issued

 Camille Clyne
 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.

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Schedule 1
SUMMARY OF CALCULATIONS

A. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before October 31, 2023

Rent Owing To October 31, 2023	\$34,500.00
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Total the Tenants must pay to continue the tenancy	\$34,686.00

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before November 11, 2023

Rent Owing To November 30, 2023	\$36,500.00
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Total the Tenants must pay to continue the tenancy	\$36,686.00

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

Rent Owing To Hearing Date	\$32,223.25
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$2,000.00
Less the amount of the interest on the last month's rent deposit	- \$19.86
Total amount owing to the Landlord	\$31,389.39
Plus daily compensation owing for each day of occupation starting October 12, 2023	\$65.75 (per day)