



Order under Section 69 Residential Tenancies Act, 2006

Citation: Aristocrat Lamps & Lighting Ltd. v Frey, 2023 ONLTB 70395

Date: 2023-10-30

File Number: LTB-L-042952-23

In the matter of: 221, 28 INDUSTRIAL ST
EAST YORK ON M4G1Y9

Between: Aristocrat Lamps & Lighting Ltd. Landlord

And

Monica Frey Tenant

Aristocrat Lamps & Lighting Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Monica Frey (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 12, 2023.

The Landlord's Agent, M. Hollander and the Landlord's Legal Representative, E. Page 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 \$1,778.97. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$58.49. This amount is calculated as follows: \$1,778.97 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, 2023 are \$40,249.32.
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 \$1,778.97 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 \$16.33 is owing to the Tenant for the period from June 1, 2023 to October 12, 2023.

10. Landlord was informed that pursuant to subsection 207(1) of the *Residential Tenancies Act, 2006* (the 'Act') the monetary jurisdiction of the Board is \$35,000.00.
11. 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
12. The Landlord's legal 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.

Relief from eviction

13. The Tenant testified that she lost her job in June 2020 due to health issues. She has been unable to go back to work and receives Ontario Works. She has taken in a roommate to help with household expenses.
14. The Tenant requested a delayed termination date and testified that she will be able to come up with the arrears by relying on her community. The Tenant testified that she has lived in the unit for 20 years, and she withheld her rent because she has maintenance issues for which she has filed her own application.
15. The Landlord is requesting a standard order. The Landlord's legal representative submits that the Tenant has paid no rent in 2 years. She submits that any delay afforded to the Tenant is prejudicial to the Landlord given the quantum of the arrears and that they are already above the monetary jurisdiction of the Board.
16. Given the length of this tenancy and the Tenant's strong belief that she can get assistance with the arrears, I find that a small delay beyond the standard time is warranted in the circumstances. I do not find that a longer delay is fair or reasonable. The Tenant has failed to pay rent for the last 2 years. I would assume that if she is "withholding" rent because of maintenance issues, then that rent would be sitting somewhere, readily available to pay out to the Landlord in satisfaction of what is owed.
17. 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 not be unfair to postpone the eviction until November 15, 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:**
 - \$40,435.32 if the payment is made on or before October 31, 2023. See Schedule 1 for the calculation of the amount owing. This amount exceeds the monetary jurisdiction of the Board. This is an amount that the Tenant can choose to pay if they choose not to vacate the rental unit. The Board is not ordering this amount to be paid. This amount is optional and only required if the Tenant elects to remain in the rental unit. Therefore, the Board is not ordering this amount to be paid and is not ordering an amount that exceeds the limit.

OR

- \$42,214.29 if the payment is made on or before November 30, 2023. See Schedule 1 for the calculation of the amount owing. This amount exceeds the monetary jurisdiction of the Board. This is an amount that the Tenant can choose to pay if they choose not to vacate the rental unit. The Board is not ordering this amount to be paid. This amount is optional and only required if the Tenant elects to remain in the rental unit. Therefore, the Board is not ordering this amount to be paid and is not ordering an amount that exceeds the limit.
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 30, 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 30, 2023**
 5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$35,186.00*. 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 for the calculation of the amount owing.
 6. The Tenant shall also pay the Landlord compensation of \$58.49 per day for the use of the unit starting October 13, 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 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 1, 2023 at 7.00% annually on the balance outstanding.
 8. If the unit is not vacated on or before November 30, 2023, then starting December 1, 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 December 1, 2023.

October 30, 2023

Date Issued

Emily Robb

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 11, 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.

2023 ONLTB 70395 (CanLII)

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 October 31, 2023

Rent Owing To October 31, 2023	\$40,249.32
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	\$40,435.32

B. 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	\$42,028.29
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	\$42,214.29

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

Rent Owing To Hearing Date	\$39,172.23
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	- \$1,778.97
Less the amount of the interest on the last month's rent deposit	- \$16.33
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	\$35,186.00*
Plus daily compensation owing for each day of occupation starting October 13, 2023	\$58.49 (per day)