



Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

Citation: Starlight Blackstar OPCO 2 ULC v Cortes, 2023 ONLTB 70870

Date: 2023-10-27

File Number: LTB-L-041139-22-RV

In the matter of: 2103, 1465 LAWRENCE AVE W
NORTH YORK ON M6L1B2

Between: Starlight Blackstar OPCO 2 ULC Landlord

And

Claudia Cortes Tenant

Starlight Blackstar OPCO 2 ULC (the 'Landlord') applied for an order to terminate the tenancy and evict Claudia Cortes (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-041139-22 issued on March 24, 2023.

On June 1, 2023, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

On June 2, 2023 interim order LTB-L-041139-22-RV-IN was issued, staying the order issued on March 24, 2023.

On August 11, 2023 interim order LTB-L-041139-22-RV-IN2 was issued, granting the Tenant's review and directing the application to a fresh hearing.

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

The Landlord's Legal Representative Sean Beard, the Tenant's Legal Representative Kyle Warwick, Spanish Interpreter Tali Cosman and the Tenant attended the hearing.

Determinations:

1. The Tenant submits that the Tenant, Juan Carlos Villa should be removed as a party to this application as he was removed from the tenancy in 2013. Correspondence dated December 16, 2013 from Pina Romano, Property Manager with Roman Group Properties states that they were notified that the Tenant Juan Carlos Villa had vacated the rental unit in 2011 and was removed from the lease. The correspondence further states that the Tenant Claudia Cortes had assumed responsibility for the rental unit with a lease being signed April 1, 2013. Based on the evidence before me, I am satisfied that the Tenant Juan Carlos Villa shall be removed as a party to these proceedings.

2. 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.
3. As of the hearing date, the Tenant was still in possession of the rental unit.
4. The lawful rent is \$1,247.74. It is due on the 1st day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$41.02. This amount is calculated as follows: $\$1,247.74 \times 12$, divided by 365 days.
6. The Tenant has paid \$7,336.00 to the Landlord since the application was filed.
7. The rent arrears owing to October 31, 2023 are \$30,301.31. The Tenant does not dispute this amount.
8. The Landlord submits that it incurred an administration charge in the amount of \$20.00 as the result of a NSF cheque dated January 4, 2023 provided by the Tenant. The Tenant has no recollection of providing this cheque and states that she paid by money order although the Tenant admits that she is confused and has no documentation to substantiate her position. It was noted that the Tenant did send guaranteed funds to the Landlord on January 16, 2023, however the Landlord's rent ledger does indicate that it incurred a "returned check charge" in the amount of \$20.00 due to cheque 4155444#131 being returned for non-sufficient funds.
9. I am satisfied that the Landlord is entitled to \$20.00 to reimburse the Landlord for administration charges the Landlord incurred as a result of 1 cheque given by or on behalf of the Tenant which was returned NSF.
10. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
11. The Landlord collected a rent deposit of \$1,202.88 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.
12. Interest on the rent deposit, in the amount of \$38.41 is owing to the Tenant for the period from January 1, 2021 to October 18, 2023.

Relief from eviction:

13. The next issue for the Board to consider is with respect to relief from eviction.
14. Pursuant to section 83(2) of the Act, the Board is required to consider "all of the circumstances" to determine whether or not it would be unfair to refuse eviction, delay eviction or put in place some sort of conditional order.
15. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.

16. The Landlord's Legal Representative requests a standard order for eviction as the Tenant has not paid any rent for quite some time and the arrears are substantial. It was submitted that the Landlord would be prejudiced as the Tenant has made little effort to pay rent to the Landlord and the arrears are now over \$30,000.00, approaching the monetary jurisdiction of the Board. The rent ledger provided by the Landlord shows that from February 1, 2023 to October 1, 2023, the Tenant has made two rent payments to the Landlord in the total amount of \$2,600.00.
17. The Tenant submits that she has resided in the rental unit since November, 2006, she raised her children there (now ages 26 and 30 years old) and the neighbours are like her family. The Tenant testified that she suffers from depression with a recent hospitalization on July 5, 2023. The Tenant received psychiatric treatment and has been assisted by a caseworker. The Tenant submits that she has not paid rent to the Landlord for the last few months because she was unsure if she would be evicted and she did not have the money for rent.
18. The Tenant also submits that she has not paid rent as she was unable to work due to the COVID-19 pandemic, is currently in receipt of social benefits in the amount of \$733.00 per month and that is her only source of income currently. The Tenant states that she has taken some esthetician courses but cannot purchase trade equipment as she does not have sufficient funds to do so. The Tenant states that she has no fixed salary, just started working as a hairstylist, doing eyelashes and manicures and estimates she could potentially earn between \$4,000.00 and \$5,000.00 per month. No documentation was submitted to substantiate these claims.
19. The Tenant states that she recently attempted to access additional funds from the rent bank and made inquiries for subsidized housing but there is an extensive wait list and she is still waiting for further information.
20. Given all of the evidence and submissions before me, I am satisfied that it would not be unfair to the Landlord to give the Tenant some additional time to move in light of the circumstances. The Tenant has made no reasonable proposal to pay rent, has not paid rent to the Landlord in quite some time, and it does not appear that she has the means to pay the rent. However, I am not prepared to delay eviction for four months as the Tenant's Legal Representative requested.
21. While I accept the Tenant has had difficulties, particularly with her personal and financial circumstances, she has made no attempt, until recently, to address the rent arrears by contacting the rent bank or other social agencies. It is noted that since the Tenant's request for review in June, 2023, the Tenant has made no rent payments for the months of July, August, September and October, 2023. This tenancy, in my view, is just not viable any longer and to prolong it would be prejudicial to the Landlord and unfair to the Tenant as the arrears are surmounting. Given the quantum of the arrears, the eviction will be delayed to November 30, 2023 as this additional time will assist the Tenant in arranging alternative accommodations.
22. 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 not be unfair to postpone the eviction until November 30, 2023 pursuant to subsection 83(1)(b) of the Act.

23. This order contains all of the reasons within it and no further reasons will be issued.

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:**
 - \$30,507.31 if the payment is made on or before October 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$31,755.05 if the payment is made on or before November 30, 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 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 \$28,756.64. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application and unpaid NSF charges. 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 \$41.02 per day for the use of the unit starting October 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 7, 2023, the Tenant will start to owe interest. This will be simple interest calculated from November 8, 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 27, 2023
Date Issued

Heather Chapple
 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 June 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 October 31, 2023

Rent Owing To October 31, 2023	\$37,637.31
Application Filing Fee	\$186.00
NSF Charges	\$20.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$7,336.00
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	\$30,507.31

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	\$38,885.05
Application Filing Fee	\$186.00
NSF Charges	\$20.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$7,336.00
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	\$31,755.05

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

Rent Owing To Hearing Date	\$37,127.93
Application Filing Fee	\$186.00
NSF Charges	\$20.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$7,336.00
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	- \$1,202.88
Less the amount of the interest on the last month's rent deposit	- \$38.41
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	\$28,756.64
Plus daily compensation owing for each day of occupation starting October 19, 2023	\$41.02 (per day)