



Order under Section 69 Residential Tenancies Act, 2006

Citation: Denha v Hess, 2023 ONLTB 70868

Date: 2023-10-27

File Number: LTB-L-029929-23

In the matter of: 3502 HALLEE CRES
WINDSOR ON N8W0B2

Between: Saad Shamoon Raffo Denha and Iman Abdullah Basheer Habash Landlord

And

Britany Breanne Hess Tenant

Saad Shamoon Raffo Denha and Iman Abdullah Basheer Habash (the 'Landlord') applied for an order to terminate the tenancy and evict Britany Breanne Hess (the 'Tenant') because

- the Tenant did not pay the rent that the Tenant owes; (L1 Application) and
- the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year. (L2 Application)

This application was heard by videoconference on October 19, 2023.

Only the Landlords and the Landlord's Representative, Shadenn Almadani attended the hearing. Saven Denha attended as translator for the Landlords.

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. The Landlord's Representative also mailed the LTB L1/L9 Update Form to the Tenant on October 4, 2023. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

L1 Application:

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 \$2,200.00. It is due on the 1st day of each month.

4. Based on the Monthly rent, the daily rent/compensation is \$72.33. This amount is calculated as follows: \$2,200.00 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, 2023 are \$19,200.00.
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 \$2,150.00 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. The Landlord applied the deposit to last month of the term but the tenancy continued as a monthly to month tenancy. Section 3, of the Act states despite any agreement or waiver to the contrary, the Act prevails. Section 106 of the Act, requires a landlord to apply a rent deposit to the last month rent of the tenancy when a tenancy is terminated, therefore it cannot be used or applied for any other rent period. Since the rent deposit can only be applied to the last rental period of the Landlord choose to extinguish the rent charges that were applied to a different rent period.
9. Interest on the rent deposit, in the amount of \$82.50 is owing to the Tenant for the period from September 30, 2021 to October 19, 2023.

L2 Application:

10. 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.
11. The Tenant was in possession of the rental unit on the date the application was filed.
12. On March 22, 2023, the Landlord mailed the Tenant an N12 notice of termination, deemed served on March 27, 2023 with the termination date of May 31, 2023. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlords and their child.
13. The Landlord in good faith requires possession of the rental unit for the purpose of their own residential occupation for a period of at least one year.
14. The Landlord has compensated the Tenant an amount equal to one month's rent by May 31, 2023. The Landlord testified that a certified cheque dated April 27, 2023 was mailed to the Tenant on April 28, 2023 deemed served on May 3, 2023 after the Tenant's mother refused to accept the cheque when the Landlord's brother, living next door to the rental unit, attempted to hand deliver the one month compensation. The Landlord stated that the cheque hasn't been cashed. The Landlord has sufficiently complied with section 55.1 of the Act that requires the one month compensation to be paid by the termination date on the notice.
15. 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.
16. The arrears are high and there's been no payments from the Tenant after the application was filed. Since eviction is granted, the L1 application is non-remedial.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated on November 7, 2023.
2. The Tenant shall pay to the Landlord \$16,327.77. 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.
3. The Tenant shall also pay the Landlord compensation of \$72.33 per day for the use of the unit starting October 20, 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 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.
5. If the unit is not vacated on or before November 7, 2023, then starting November 8, 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 8, 2023.

October 27, 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 8, 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	\$18,374.27
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	- \$2,150.00
Less the amount of the interest on the last month's rent deposit	- \$82.50
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	\$16,327.77
Plus daily compensation owing for each day of occupation starting October 20, 2023	\$72.33 (per day)

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