



Order under Section 69 Residential Tenancies Act, 2006

Citation: Angel v Mcardle, 2023 ONLTB 69940

Date: 2023-10-25

File Number: LTB-L-064794-23

In the matter of: 1366 JOHN KENNEY DR
LONDON ON N6G0Y1

Between: Sergii Angel Landlords
Nina Angel

And

Jeff Mcardle Tenant

Sergii Angel and Nina Angel (the 'Landlords') applied for an order to terminate the tenancy and evict Jeff Mcardle (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

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

The Landlords Sergii Angel and Nina Angel, the Landlord's representative Elina Vasilieva, licensed paralegal and the Tenant Jeff Mcardle attended the hearing.

Preliminary Issues:

1. As a preliminary matter, the Tenant requested an adjournment of the proceedings citing a lack of time to prepare for the hearing and retain legal representation. The Tenant claimed the Tenant had not received the Notice of Hearing until on or about September 2023 and that they had made a single attempt to reach out to find representation. Taking in submissions from both parties at this hearing, I determined the adjournment was not to be granted. My reasons for denying this adjournment are as follows.
2. The Landlord's representative objected to the adjournment due to the prejudice an adjournment would cause the Landlords as the arrears were significant. The Landlord's representative further claimed the Tenant had more than enough time to secure representation and prepare for a hearing which was straight forward in nature and that all evidence had been disclosed in a package to the Tenants more than 7 days before the hearing.
3. Section 183 of the Residential Tenancies Act, 2006 (the 'Act') states that the Board shall adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and be heard on the matter.

4. I find that the Tenant received adequate notice of the hearing and had a reasonable opportunity to obtain legal representation including the Tenant's own testimony where the Tenant testified he procrastinated after making a single attempt to find legal representation through a friend and made no subsequent attempt to follow up to retain legal representation, or alert the Landlords, the Landlord's representative or the Board in advance regarding a lack of time or regarding any challenges related to retaining legal representation. Both sides were present at the hearing and the Tenant had received the Landlords' evidence at least 7 days before the hearing in accordance with LTB Rule of Procedure 19. I am therefore satisfied that the Tenant had an adequate opportunity to know the issues and be heard on the matter.

Determinations:

1. The Landlords 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 \$2,600.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$85.48. This amount is calculated as follows: \$2,600.00 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 \$14,800.00.
7. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlords collected a rent deposit of \$2,600.00 from the Tenant and this deposit is still being held by the Landlords. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.

Relief from Eviction

9. 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 Landlords attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
10. The Landlord, Mr. Angel, testified he has limited income as the sole income earner for his spouse, two school-aged children and primary caregiver for his 86-year-old mother. The Landlord further testified he and his family are Ukrainian refugees and expect another family member to arrive and move-in within 1-month who is escaping the conflict in the Ukraine. The Landlord further testified he is currently draining his savings to cover his expenses and requires the income from the rental unit to cover the mortgage payments

and his family's other expenses and that this current situation is not financially sustainable given his family's circumstance.

11. The Tenant requested to delay the eviction. The Tenant testified he does not have the financial means to cover the lawful monthly rent as he is carrying approximately \$100,000.00 in debt and will be required to continually servicing the interest payments on the debt rather than paying the monthly rent.
12. Having heard all the evidence and considered all the circumstances, I find that it would be unfair to grant relief from eviction. In particular, I find the Landlords would be unfairly prejudiced should the Tenant's request to delay the eviction be granted.

It is ordered that:

1. The tenancy between the Landlords 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:**
 - \$14,986.00 if the payment is made on or before October 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$17,586.00 if the payment is made on or before November 5, 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 5, 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 5, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$10,665.61. 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 Landlords owe 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 Landlords compensation of \$85.48 per day for the use of the unit starting October 12, 2023 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlords the full amount owing on or before November 5, 2023, the Tenant will start to owe interest. This will be simple interest calculated from November 6, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before November 5, 2023, then starting November 6, 2023, the Landlords 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 Landlords on or after November 6, 2023.

October 25, 2023

Date Issued

Greg Witt

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 6, 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	\$14,800.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlords 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 Landlords owe 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	\$14,986.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before November 5, 2023

Rent Owing To November 30, 2023	\$17,400.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlords 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 Landlords owe 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	\$17,586.00

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

Rent Owing To Hearing Date	\$13,140.28
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	- \$2,600.00
Less the amount of the interest on the last month's rent deposit	- \$60.67
Less the amount the Landlords owe 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 Landlords	\$10,665.61
Plus daily compensation owing for each day of occupation starting October 12, 2023	\$85.48 (per day)