



Order under Section 69 Residential Tenancies Act, 2006

Citation: Sancharra v Stewart, 2023 ONLTB 69923

Date: 2023-10-25

File Number: LTB-L-013746-23

In the matter of: Basement Unit #1, 323 COOK RD.
NORTH YORK ON M3J3T2

Between: Dhyman Sancharra Landlord

And

Rakiel Elijah Odulate Stewart Tenant

Dhyman Sancharra (the 'Landlord') applied for an order to terminate the tenancy and evict Rakiel Elijah Odulate Stewart (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 10, 2023.

The Landlord's Legal Representative, Jack Berger, the Landlord, 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 \$650.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$21.37. This amount is calculated as follows: $\$650.00 \times 12$, 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 \$13,650.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.
9. At the hearing, the Tenant raised an issue regarding an alleged illegal lockout. The Tenant submitted that he was locked out of his unit for 21 months.

Tenant's allegation about an illegal lockout

10. At the hearing, the Tenant claimed that the Landlord locked him out of the rental unit illegally. The Landlord's legal representative denied the allegation.
11. The Tenant did not disclose to the Landlord that he would be raising this issue under section 82 of the *Residential Tenancies Act, 2006* (the 'Act') in advance of the hearing, nor did he explain the lack of advance disclosure.
12. The Landlord's legal representative submitted that this claim is a delay tactic and the Tenant never raised this issue at a previous hearing before the Board on a separate application bearing file number of LTB-L-026405-22.
13. The Tenant confirmed that he currently has access to the rental unit.
14. Based on the parties' submissions, including the Tenant's lack of disclosure, I refused to hear evidence of this issue. This order does not, in itself, prevent the Tenant from filing his own application about this issue. In addition, based on the Tenant's submission that there is no ongoing illegal lockout, I am not required to dismiss this application under section 83 on that basis.

Relief from Eviction

15. The Tenant requested that the Board exercise its discretion by allowing the Tenant to remain in possession of the unit. The Tenant proposed a repayment plan of \$350.00 each month towards the arrears. This would be an approximate 39-month plan.
16. The Landlord's Legal Representative submitted that the proposal is unreasonable given its duration. He also submitted that the Tenant has not made any payments for over a year, since February 1, 2022.
17. The Tenant provided testimony about his financial circumstances. He testified that his income exceeds his monthly expenses and that he can afford the proposed payment. However, I find the Tenant's testimony difficult to reconcile with the amount the arrears, the fact that the Tenant did not explain why he accrued the arrears or why he has not paid any rent since February 2022. Accordingly, I do not find the Tenant's testimony about his financial circumstances credible and I am not satisfied that the Tenant can afford to pay the arrears, let alone the ongoing rent. Therefore, I cannot find the proposed payment plan appropriate in the circumstances, especially considering its duration. Similarly, I find that delaying the eviction would not be appropriate in the circumstances. I find that postponing the eviction will more likely than not result in an increase in the arrears owing.
18. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) 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:**
 - \$13,836.00 if the payment is made on or before October 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$14,486.00 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 \$13,399.70. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$21.37 per day for the use of the unit starting October 11, 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 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 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 6, 2023.

October 25, 2023**Date Issued**_____
Teresa Hunt

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 | \$13,650.00 |
| 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 | \$13,836.00 |

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

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|--|--------------------|
| Rent Owing To November 30, 2023 | \$14,300.00 |
| 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 | \$14,486.00 |

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

| | |
|--|-------------|
| Rent Owing To Hearing Date | \$13,213.70 |
| 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 | - \$0.00 |
| Less the amount of the interest on the last month's rent deposit | - \$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 amount owing to the Landlord | \$13,399.70 |
| Plus daily compensation owing for each day of occupation starting October 11, 2023 | \$21.37 (per day) |