



Order under Section 69 Residential Tenancies Act, 2006

Citation: 90 EASTDALE INC. v Hawkins, 2023 ONLTB 70832

Date: 2023-10-24

File Number: LTB-L-011504-23

In the matter of: 0810, 90 EASTDALE AVE
TORONTO ON M4C5A2

Between: 90 EASTDALE INC. Landlord

And

Penny Hawkins Tenant

90 EASTDALE INC. (the 'Landlord') applied for an order to terminate the tenancy and evict Penny Hawkins (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on August 31, 2023.

The Tenant attended the hearing. The Landlord was represented at the hearing by Jeff Shabes.

Determinations:

Section 82 Issues

1. The Tenant attempted to raise issues related to a bed bug issue in the unit.
2. During a hearing for a landlord application for rent arrears or for termination of the tenancy for rent arrears a tenant may raise any issue that could be raised in a tenant application under the *Residential Tenancies Act, 2006* (the 'Act') if they follow the requirements contained in s.82 of the Act. The tenant must provide the landlord and the Board with a detailed description of each issue the tenant intends to raise and a copy of all documents, pictures and other evidence that the tenant intends to rely upon at least seven days before the hearing, unless the Board orders or directs otherwise.
3. The Tenant did not provide the Board, or the Landlord, with the prescribed form indicating she wishes to raise issues under s.82. The Tenant provided the Board with some pictures and text messages but did not follow the requirements of the Act.
4. When s.82 issues are raised a detailed description of the issue the Tenant is attempting to raise is required so the Landlord may prepare a proper response. In this case, the issue the Tenant is attempting to raise is not clear, nor is it clear the remedy she is seeking.
5. Finally, it is not clear when the bed bug infestation took place. A cursory look at the evidence suggests the infestation may have taken place in 2020, well beyond the limitation period for issues the Board may consider.

6. The lack of sufficient detail surrounding the Tenant's claim would make it impossible for the Landlord to craft a proper response. I find it would be procedurally unfair to make a determination on the Tenant's s. 82 issues. The Tenant may wish to seek legal advice to consider if there are grounds to bring her own application before the Board.

L1 Application

7. 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.
8. As of the hearing date, the Tenant was still in possession of the rental unit.
9. The lawful rent is \$1,696.19. It is due on the 1st day of each month.
10. Based on the Monthly rent, the daily rent/compensation is \$55.77. This amount is calculated as follows: \$1,696.19 x 12, divided by 365 days.
11. The Tenant has paid \$11,517.66 to the Landlord since the application was filed.

Rent Arrears

12. At the hearing the parties disagreed on the amount of rent arrears owing. I conducted a thorough review of the Tenant's payment history and the Landlord's rent ledger.
13. After a careful review of the payment history, I find the rent arrears owing to August 31, 2023, are \$1,218.36.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. The Landlord collected a rent deposit of \$1,696.19 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.
16. Interest on the rent deposit, in the amount of \$28.23 is owing to the Tenant for the period from January 1, 2023, to August 31, 2023.
17. According to s. 83 of the Act when the Board hears an application for an order evicting a tenant, the Board must consider whether there are any circumstances that support granting relief from eviction.
18. The Act is remedial legislation and the courts have determined that evicting a tenant is a remedy of last resort. In the cases of *Sutherland v. Lamontagne*, [2008] O.J. No. 5763 (Div. Ct.) and *Paderewski Society v. Ficyk*, [1998], the Divisional Court stated,

"To put somebody out of their home must, in my view, call for clear and compelling circumstances that it's no longer possible for the arrangement to continue."
19. The Tenant is on ODSP and experiencing significant financial hardship. Even with her financial difficulties the Tenant has paid a significant portion of her rent since the

application was filed. This suggests a good faith effort by the Tenant to preserve the tenancy.

20. The Landlord's representative acknowledged the Tenant's financial difficulties. The Landlord was not opposed to a short delay in the eviction date. This would allow the Tenant to apply for funding from social service agencies to assist on paying the remainder of the rent arrears.
21. The Tenant was not able to provide a concrete payment proposal to pay down the rent arrears. Without a proposal to pay down the arrears, I find it would be inappropriate to deny eviction. However, I accept the Landlord's submissions that a short delay in eviction may allow the Tenant time to be able to pay down the remainder of the rent arrears.
22. 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 30, 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:**
 - \$4,796.74 if the payment is made on or before October 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$6,492.93 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. As of the date of the hearing, the amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the arrears of rent, compensation and the cost of filing the application the Landlord is entitled to by \$320.06. See Schedule 1 for the calculation of the amount owing. However, the Landlord is authorized to deduct from the amount owing to the Tenant \$55.77 per day for compensation for the use of the unit starting September 1, 2023, until the date the Tenant moves out of the unit.
6. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

7. 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.
8. 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 24, 2023
Date Issued

Bryan Delorenzi
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	\$16,128.40
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$11,517.66
Total the Tenant must pay to continue the tenancy	\$4,796.74

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	\$17,824.59
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$11,517.66
Total the Tenant must pay to continue the tenancy	\$6,492.93

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

Rent Owing To Hearing Date	\$12,736.02
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$11,517.66
Less the amount of the last month's rent deposit	- \$1,696.19
Less the amount of the interest on the last month's rent deposit	- \$28.23
Total amount owing to the Landlord	\$(320.06)
Plus daily compensation owing for each day of occupation starting September 1, 2023	\$55.77 (per day)