



Order under Section 69 Residential Tenancies Act, 2006

Citation: METCAP LIVING MANAGEMENT INC. v Ford, 2023 ONLTB 70137

Date: 2023-10-24

File Number: LTB-L-025053-23

In the matter of: 306, 1320 DANFORTH RD
SCARBOROUGH ON M1J1G1

Between: METCAP LIVING MANAGEMENT INC. Landlord

And

Anthony Ford Tenant

METCAP LIVING MANAGEMENT INC. (the 'Landlord') applied for an order to terminate the tenancy and evict Anthony Ford (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, K. Hernandez, and the Tenant attended the hearing.

Determinations:

N4 Notice

1. Based on the evidence before me, I am satisfied that the Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice) in accordance with the *Residential Tenancies Act, 2006* (the "Act"). 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. Subsection 191(1) of the Act states:

A notice or document is sufficiently given to a person other than the Board,

(a) by handing it to the person;

(b) if the person is a landlord, by handing it to an employee of the landlord exercising authority in respect of the residential complex to which the notice or document relates;

(c) if the person is a tenant, subtenant or occupant, by handing it to an apparently adult person in the rental unit;

(d) by leaving it in the mail box where mail is ordinarily delivered to the person;

(e) if there is no mail box, by leaving it at the place where mail is ordinarily delivered to the person;

(f) by sending it by mail to the last known address where the person resides or carries on business; or

(g) by any other means allowed in the Rules.

Emphasis Added

3. Subsection 191(3) of the Act states:

A notice or document given by mail shall be deemed to have been given on the fifth day after mailing.

4. The Tenant stated that he did not receive an N4 Notice, but he would have to check his papers. The Landlord's Legal Representative submitted that the N4 Notice was served on March 3, 2023 and a certificate of service confirming this was submitted with the application.
5. Subsection 191(1) of the Act states that a document is "sufficiently given to a person" by way of a number of permissible methods, including sending it by mail to the last known address. This means that as long as the Landlord gives the document (N4 Notice) to the Tenant by one of the permissible methods, then under the Act, the Tenant has been served whether or not they actually received it because it was "sufficient given."
6. This interpretation is supported by subsection 191(3) which states when a notice is served by mail (a permissible method) it is deemed to have been given five days after mailing. It is not uncommon for individuals to not receive things that are mailed to them, but under subsection 191(3) of the Act, as long as it was mailed the Landlord has served it in accordance with the Act.
7. The Landlord filed a certificate of service with this application confirming that the N4 Notice was served on the Tenant by mailing the N4 Notice to the Tenant on March 3, 2023. The Tenant confirmed that there are no issues with his mail as he receives it through his door.
8. Based on the evidence before me, I find that the N4 Notice was sufficiently given to the Tenant when the Landlord served a copy by mailing it to the rental unit which is a permissible method of service as per subsection 191(1) of the Act.
9. As of the hearing date, the Tenant was still in possession of the rental unit.
10. The lawful rent is \$1,272.23. It is due on the 1st day of each month.
11. Based on the Monthly rent, the daily rent/compensation is \$41.83. This amount is calculated as follows: $\$1,272.23 \times 12$, divided by 365 days.

Rent Arrears

12. The Landlord's Legal Representative submitted that the Tenant has paid \$6,133.06 to the Landlord since the application was filed and therefore, the arrears to October 31, 2023 are \$5,866.48.
13. The Tenant disputed the amount owing and believed he only owed \$2,927.00. He stated that his last payment was on September 6, 2023 and that he currently had October's rent in the bank. He also stated that he only received the Landlord's numbers last week and hasn't had enough time to file anything. The Landlord's Legal Representative submitted

that the rent arrears stem from March 2022 as the Tenant has continually not paid his rent in full or on time.

14. The evidence before me was insufficient to find that the Tenant paid more than \$6,133.06 since this application was filed or that the arrears are less than what was claimed in the N4 Notice or the application. The Tenant did not provide any evidence of additional payments or how he arrived at the amount he believed to be owing.
15. Therefore, I find that the rent arrears owing to October 31, 2023 are \$5,866.48.
16. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
17. The Landlord collected a rent deposit of \$1,191.65 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.
18. Interest on the rent deposit, in the amount of \$23.10 is owing to the Tenant for the period from January 1, 2023 to October 10, 2023.

Relief From Eviction

19. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of 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.
20. The Landlord's Legal Representative submitted that the Landlord is no longer open to a repayment plan as the Tenant has not demonstrated the ability to maintain a payment plan.
21. The Tenant stated that he has October 2023 rent in the bank and proposed to pay the rent plus \$600.00 for the next three months or pay everything in the next two months. The Tenant receives O.W. and plans to ask for additional financial assistance for the rent arrears. The Tenant is also seeking employment as he is a Chef and can do catering. The Tenant stated it is very difficult to find another unit and has a sentimental connection to the unit as his mother lived here as well as residing here for 18 years.
22. The rent arrears currently outstanding are \$5,866.48. The Tenant disputed this amount and proposed a repayment plan that did not cover the entire amount outstanding. In any event, the Tenant's current finances did not demonstrate that he could afford the payment plan proposed. Therefore, in these circumstances I find that ordering a repayment plan is not fair to the Landlord. Given the length of this tenancy and that there is a last month's rent deposit, I find that is fair to delay the eviction until November 30, 2023

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:

- \$6,052.48 if the payment is made on or before October 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$7,324.71 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 \$3,983.80. 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.
6. The Tenant shall also pay the Landlord compensation of \$41.83 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 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 1, 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 24, 2023

Date Issued

Lisa Del Vecchio

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	\$11,999.54
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$6,133.06
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	\$6,052.48

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	\$13,271.77
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$6,133.06
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	\$7,324.71

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

Rent Owing To Hearing Date	\$11,145.61
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$6,133.06
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	- \$1,191.65
Less the amount of the interest on the last month's rent deposit	- \$23.10
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	\$3,983.80
Plus daily compensation owing for each day of occupation starting October 11, 2023	\$41.83 (per day)