



Order under Section 69 Residential Tenancies Act, 2006

Citation: Hamilton Baptist N/P Homes v Salazar-Johnson, 2023 ONLTB 69688

Date: 2023-10-20

File Number:
LTB-L-022719-23

In the matter of: 25, 300 LIMERIDGE RD E
HAMILTON ON L9A5G7

Between: Hamilton Baptist N/P Homes Landlord

And

Nika Salazar-Johnson Tenant

Hamilton Baptist N/P Homes (the 'Landlord') applied for an order to terminate the tenancy and evict Nika Salazar-Johnson (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 12, 2023.

The Landlord's agent, Dan Cover ('DC'), and the Tenant's agent, Prudence Salazar-Lindsay ('PS'), 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. The Tenant is presently incarcerated in Jamaica. While the Tenant was not occupying the rental unit as of the date of the hearing, being in possession of a unit is not limited to a situation where a person is presently living the unit. Possession of a rental unit "... refers to some form of control over that unit as demonstrated by factors such as access to, use of, or occupation of the unit": *1162994 Ontario Inc. v. Bakker*, 2004 CanLII 59995 (ON CA),

para 20. There was no evidence that the Tenant took any steps to remove her property from the rental unit, return the keys, or end her tenancy. I find that as of the hearing date, the Tenant was still in possession of the rental unit.

3. The lawful rent is \$964.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$31.69. This amount is calculated as follows: \$964.00 x 12, divided by 365 days.
5. The Tenant has paid \$1,928.00 to the Landlord since the application was filed.
6. The rent arrears owing to October 31, 2023 are \$5,784.00.
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. PS is the Tenant's mother. She said that the Tenant is presently incarcerated in Jamaica. She said the Tenant was supposed to return home in September 2023, but cannot return until she gathers funds to make a substantial payment to the Jamaican authorities. It was not known when this will occur.
10. PS said she gave up her own rental unit, and has been staying in the rental unit with the Tenant's 7-year-old son, who is PS's grandson. PS said the rental unit is the only home her grandson has ever known, and they do not have anywhere else to go.
11. PS said that she could not afford to comply with a payment plan in which she would make payments on behalf of the Tenant. PS said there is a social services agency willing to pay the arrears, but only if she is added to the lease as a tenant. I do not have authority to order that the Landlord add her as a tenant.
12. PS said she needs until December 31, 2023 to find a new place for herself and her grandson, partly because she is scheduled to have surgery in November. She said she can pay ongoing rent on behalf of the Tenant until then.
13. DC said that on October 6, 2023, he left a letter in the Tenant's mailbox, offering options to repay the rent arrears over up to 12 months, but there was no response. The letter was addressed to the Tenant. DC sought a standard order terminating the tenancy 11 days after issuance of the order. DC did not give evidence of any other circumstances relevant to whether eviction should be delayed.
14. 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 December 31, 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:**

- \$5,970.00 if the payment is made on or before October 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$6,934.00 if the payment is made on or before November 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$7,898.00 if the payment is made on or before December 31, 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 December 31, 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 December 31, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$5,386.28. 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 \$31.69 per day for the use of the unit starting October 13, 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 October 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from November 1, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 31, 2023, then starting January 1, 2024, 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 January 1, 2024.

October 20, 2023
Date Issued

Mark Melchers
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 July 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	\$7,712.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,928.00
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	\$5,970.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before November 30, 2023

Rent Owing To November 30, 2023	\$8,676.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,928.00
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	\$6,934.00

C. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before December 31, 2023

Rent Owing To December 31, 2023	\$9,640.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,928.00
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	\$7,898.00

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

Rent Owing To Hearing Date	\$7,128.28
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,928.00
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	\$5,386.28
Plus daily compensation owing for each day of occupation starting October 13, 2023	\$31.69 (per day)