



Order under Section 69 Residential Tenancies Act, 2006

Citation: RPMS Property Management Services Inc v Sherwani, 2023 ONLTB 69402

Date: 2023-10-19

File Number: LTB-L-061488-23

In the matter of: 1815, 33 DAVISVILLE AVE
TORONTO ON M4S2Y9

Between: RPMS Property Management Services Inc Landlord

And

Nada Sherwani Tenant

RPMS Property Management Services Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Nada Sherwani (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 Landlord's legal representative, N. Sharma, the Tenant, and the Tenant's son, A. Kamal, attended the hearing.

Preliminary Issue:

1. The Tenant requested an adjournment to serve and file a list of issues in the tenancy and supporting evidence pursuant to section 82 of the *Residential Tenancies Act, 2006* (the 'Act'). The Tenant stated that she did not know the time requirements for service and filing because she did not read the Notice of Hearing package in its entirety. This was not done because the Tenant has difficulty with reading English.
2. Pursuant to section 82 of the Act, a tenant is permitted to raise any issue that could be the subject of an application if the Tenant complies with disclosure requirements or provides an explanation satisfactory to the Board explaining why the Tenant could not comply. Section 82(2) requires a tenant to give advance notice to the landlord of the tenant's intent to raise the issue at the hearing and this notice shall be in writing.
3. I am not satisfied that the Tenant could not comply with the section 82 disclosure requirements. The Notice of Hearing that the Tenant would have received outlines the steps to take to serve and file this evidence. While I understand that the Tenant has issues with English, the Landlord's son was present at the hearing and provided interpretation. It is not

clear why he could not have gone over the Notice with her in detail when it was received. The Tenant ought to have known her disclosure obligations to raise section 82 issues. Therefore, the adjournment request is denied. However, it should be noted that this does not preclude the Tenant from bringing her own application. She may wish to contact her local legal clinic to get advice in this regard.

Determinations:

4. 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.
5. As of the hearing date, the Tenant was still in possession of the rental unit.
6. The lawful rent is \$1,644.87. It is due on the 1st day of each month.
7. Based on the Monthly rent, the daily rent/compensation is \$54.08. This amount is calculated as follows: $\$1,644.87 \times 12$, divided by 365 days.
8. The Tenant has paid \$500.00 to the Landlord since the application was filed.
9. The rent arrears owing to October 31, 2023 are \$6,080.35.
10. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
11. The Landlord collected a rent deposit of \$1,644.87 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.
12. Interest on the rent deposit, in the amount of \$32.00 is owing to the Tenant for the period from January 1, 2023 to October 11, 2023.
13. 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 not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.
14. The Tenant submitted that the reason she did not pay the rent in full and on time was because there are issues in her tenancy that requires her income to be allocated elsewhere. For example, the Tenant stated there is mould in the unit and she has had to purchase medication. The Tenant proposed a repayment plan whereby she would pay \$500.00 on the 15th of the month until the arrears are paid in full. This is a 13 year long tenancy. The Tenant testified to her income and expenses.

15. The Landlord objected to the repayment plan as the Tenant's testimony regarding her income and expenses establishes that they cannot afford it. In addition, the Landlord states that the duration of the repayment plan is too long. The Tenant replied that she guarantees that she would adhere to the proposed payment plan.
16. I find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order. This is a longstanding tenancy. The repayment plan is only 13 months in duration. Furthermore, while I have some concerns about whether the Tenant can afford to adhere to the repayment plan, as eviction is a remedy of last resort, the Tenant should be given another opportunity to preserve the tenancy.

It is ordered that:

1. The Tenant shall pay to the Landlord \$6,266.35, which represents the arrears of rent and the application filing fee outstanding for the period ending October 31, 2023.
2. The Landlord's application for eviction of the Tenant is denied on the condition that:
 - (a) The Tenant shall make the following payments to the Landlord in respect of the monies owing under paragraph 1 of this order:

Date Payment Due	Amount of Payment
November 15, 2023	\$500.00 (costs and arrears)
December 15, 2023	\$500.00 (arrears)
January 15, 2024	\$500.00 (arrears)
February 15, 2024	\$500.00 (arrears)
March 15, 2024	\$500.00 (arrears)
April 15, 2024	\$500.00 (arrears)
May 15, 2024	\$500.00 (arrears)
June 15, 2024	\$500.00 (arrears)
July 15, 2024	\$500.00 (arrears)

August 15, 2024	\$500.00 (arrears)
September 15, 2024	\$500.00 (arrears)
October 15, 2024	\$500.00 (arrears)
November 15, 2024	\$266.35 (arrears)

(b) Commencing November 1, 2023, the Tenant shall also pay the Landlord the lawful rent in full, on or before the first day of each corresponding month for which the Tenant is in the arrears described in paragraph 1.

3. If the Tenant fails to make any of the payments in accordance with paragraph 2, and by the dates required, then:

(a) The Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant, and for the payment of any new arrears of rent and NSF charges not already ordered under paragraph 1 of this order. The Landlord must make the application within 30 days of a breach of a condition set out in paragraph 2 of this order.

(b) The balance owing under paragraph 1 of this order shall become payable on the day following the date of default. The monies owing shall bear interest at the postjudgment interest rate determined under subsection 207(7) of the Act.

October 19, 2023

Date Issued

Camille Tancioco

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.