



Order under Section 69 Residential Tenancies Act, 2006

Citation: Fountain v Yussuf, 2023 ONLTB 68310

Date: 2023-10-18

File Number: LTB-L-065755-22

2023 ONLTB 68310 (CanLII)

In the matter of: C, 9 Marier Avenue
Ottawa ON K1L5S6

Between: Thom Fountain Landlord

And

Nimo Yussuf Tenant

Thom Fountain (the 'Landlord') applied for an order to terminate the tenancy and evict Nimo Yussuf (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 5, 2023.

The Landlord and the Tenant attended the hearing. The Landlord's Legal Representative A. Kouri, Landlord's witness R. Harika and Tenant's representative Glenn Batchelor were also present.

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 \$1,900.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$62.47. This amount is calculated as follows: \$1,900.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The Landlord's evidence establishes that rent arrears owing to October 31, 2023 are \$38,900.00.

7. The Tenant does not agree with arrears claimed by the Landlord but provided no evidence to suggest that the Tenant made additional payments not accounting for in the Landlord's accounting. The Tenant asserted that that she paid had rent to the Landlord for September, October and November 2021, but had no evidence of such payments.
Therefore, I accept the Landlord's evidence respecting arrears.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$1,900.00 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.
10. Interest on the rent deposit, in the amount of \$75.64 is owing to the Tenant for the period from August 26, 2021 to October 5, 2023.
11. The arrears owing by the Tenants exceeds the monetary jurisdiction of the Board. Subsection 207(1) of the *Residential Tenancies Act, 2006*, limits the monetary jurisdiction of the Board to that of the Small Claims Court. That amount is currently \$35,000.00.
12. Section 207(3) of the Act which provides that if a party makes a claim for payment of an amount equal to or less than the Board's monetary jurisdiction, all rights of the party in excess of the Board's monetary jurisdiction are extinguished once the Board issues its order.
13. In the recent decision of *Galaxy Real Estate Core Ontario LP v. Kirpichova et al.*, 2023 ONSC 4356, the Divisional Court confirmed that the Board's monetary jurisdiction does not apply to the amount the Tenants must pay if they choose to void the order and continue the tenancy in accordance with section 74(4) of the Act. Therefore, the Tenant must pay the full arrears owing, plus the Landlord's costs, if they want to void the order and continue this tenancy.
14. The Tenant's Legal Representative wanted to raise maintenance issues, but the Tenant has already filed separate applications with the Board for the same and did not disclose a full list of these issue and the supporting evidence at least seven days before the hearing as required by section 82(2) of the Act and Rule of Procedure 19.4.
15. The Tenant's representative wanted me to combine-hear the Tenant's applications at this hearing. However, I denied the request as it would be highly prejudicial for the Landlord to be required to respond to the Tenant's claims without advance notice or disclosure of the evidence. I was not willing to adjourn the matter based on the high rent arrears balance.

Section 83 considerations

16. 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 05, 2023 pursuant to subsection 83(1)(b) of the Act.
17. The Landlord testified that the Tenant has not made any payments since the application has been filed which means the Landlord has been carrying the mortgage plus other expenses related to the property for a year and a half. This has been financially difficult for the Landlord. The Landlord has had many conversations with the Tenant about the arrears and in the Fall of 2022 he offered to reduce the rent arrears balance if she moves out.
18. There was discussion about the mould in the property and its negative effects on the Tenant's health which were not supported by any evidence. The Tenant's representative stated that the Tenant has lost a lot of furniture and clothing due to mould and is also unwell due to the presence of mold. The Tenant's representative stated that Ottawa Public Health will visit the unit in the days to come. He also spoke about a mold test that has been conducted and a preliminary report that was sent to the Board the day of the hearing.
19. The Tenant's representative submitted there should be a mandatory refusal of eviction pursuant to section 83(3)(a) of the Act because the mould is a health and safety issue.
20. The Landlord's Legal Representative stated that the Tenant has failed to provide any conclusive evidence of the presence of mould and the rent arrears are already past the jurisdictional limit of the Board. The Tenant is only trying to delay the proceedings by bringing up issues at the hearing today and an abuse of process.
21. The Tenant has filed four tenant applications at the Board out of which one was administratively close because the Tenant did not provide the information requested by the Board. The other application was withdrawn by the Tenant herself on March 19, 2023. The third and the fourth applications were filed in January and February 2023 respectively.
22. The Tenant has had time in between the last hearing which was adjourned in May 2023 to get mould tests done or submit any medical documents to prove that the mould is affecting her negatively. There was no evidence to prove that the mould in the rental unit was that severe. I do not find based on all the evidence before me that the mould issue is a serious breach under section 83(3) of the Act.
23. I have also considered the evidence that the Tenant is suffering the post-partum depression after she lost a baby in May 2023. The Tenant's representative asked for three weeks and then changed that to three months for the Tenant to move out of the rental unit.
24. Weighing the circumstances of both parties, I find that a delay beyond November 05, 2023 will be highly prejudicial to the Landlord given that the arrears are already beyond the Board's monetary jurisdiction. The Landlord is holding a last month's rent deposit therefore a slight delay will not increase the rent arrears significantly. A month's time from the hearing, may give the Tenant some time to find another suitable accommodation.

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:**
 - \$39,086.00 if the payment is made on or before October 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$40,986.00 if the payment is made on or before November 05, 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 05, 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 05, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$35,186.00. 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 \$62.47 per day for the use of the unit starting October 6, 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 18, 2023

Date Issued

Sheena Brar

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 16, 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	\$38,900.00
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	\$39,086.00

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

Rent Owing To November 30, 2023	\$40,800.00
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	\$40,986.00

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

Rent Owing To Hearing Date	\$37,312.35
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	- \$1,900.00
Less the amount of the interest on the last month's rent deposit	- \$75.64

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	\$35,522.71
Plus daily compensation owing for each day of occupation starting October 6, 2023	\$62.47 (per day)
Total amount owing to the Landlord as per jurisdictional limit of the Board	\$35,186.00