



Order under Section 69 Residential Tenancies Act, 2006

Citation: NEW SPADINA GARMENT INDUSTRY CORP v James, 2023 ONLTB 38488

Date: 2023-10-18

File Number: LTB-L-065939-22

In the matter of: 403, 3561 EGLINTON AVE W YORK
ON M6M5C7

Between: NEW SPADINA GARMENT INDUSTRY CORP Landlord

And

Dianne James Tenant

NEW SPADINA GARMENT INDUSTRY CORP (the 'Landlord') applied for an order to terminate the tenancy and evict Dianne James (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on May 10, 2023.

Only the Landlord's Legal Representative Ramona Hossu, attended the hearing.

As of 9:56 a.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

At the hearing, it came to my attention that the rent owing on the application, which was filed on November 8, 2022, did not contain the rent for November, 2022. The Landlord's Legal Representative argued that the Tenant had been updated on the arrears, and that the Tenant had been served with their rent ledger and the L1/L9 update which reflected a balance owing of \$3,013.00, which included \$822.00 in rent from November, 2022.

After the hearing, I considered the Landlord's submissions, and weighed them against the Tenant's right to be notified of the case against them. I determined that it would be inappropriate to amend the application. In making this determination, I considered that the arrears sought at the hearing were higher than the arrears claimed on the application and the rent charged since the application was filed. I also considered that the L1/L9 update form was not filled out correctly and did not include the amount of rent owing since the application was filed. As such, it was not clear

that the Tenant had received notice of the Landlord's intent to amend the application to reflect November's rent. Therefore, the application was not amended.

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 \$822.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$27.02. This amount is calculated as follows: \$822.00 x 12, divided by 365 days.
5. The Tenant has paid \$5,586.00 to the Landlord since the application was filed.
6. The rent arrears owing to May 31, 2023 are \$2,191.00.
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. I have considered all of the disclosed circumstances in accordance with subsection 83 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 the Landlord did attempt to negotiate repayment of the arrears of rent. In making this finding I considered the Landlord's Legal Representative's submissions that the Landlord contacted the Tenant and the Tenant promised to pay the arrears, but the Tenant did not attend and no other circumstances were presented to me, I find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
10. Rent has come due since the hearing. I will direct the Landlord to apply any payments made by the Tenant since the hearing against the balance owing set out in the order below.

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:**
 - \$6,937.00 if the payment is made on or before October 29, 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 October 29, 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 October 29, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$2,275.20. 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 \$27.02 per day for the use of the unit starting May 11, 2023 until the date the Tenant moves out of the unit.
7. The Landlord shall apply any payments made by the Tenant since the hearing against the amounts owing in Paragraphs 2 and 5 above.
8. If the Tenant does not pay the Landlord the full amount owing on or before October 29, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 30, 2023 at 6.00% annually on the balance outstanding.
9. If the unit is not vacated on or before October 29, 2023, then starting October 30, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. 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 October 30, 2023.

October 18, 2023

Date Issued

Kathleen Wells

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 April 30, 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 29, 2023

Rent Owing To October 31, 2023	\$12,337.00
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$5,586.00
Total the Tenant must pay to continue the tenancy	\$6,937.00

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

Rent Owing To Hearing Date	\$7,675.20
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$5,586.00
Total amount owing to the Landlord	\$2,275.20
Plus daily compensation owing for each day of occupation starting May 11, 2023	\$27.02 (per day)