



Order under Section 69 Residential Tenancies Act, 2006

Citation: Pavlov v Kotwa, 2023 ONLTB 66746

Date: 2023-10-11

File Number: LTB-L-027326-22

In the matter of: 2B, 300 Roncesvalles
Toronto ON M6R1R4

Between: Nicholas Pavlov Landlord

And

Patrick Kotwa Tenant

Nicholas Pavlov (the 'Landlord') applied for an order to terminate the tenancy and evict Patrick Kotwa (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on September 27, 2023.

The Landlord, the Landlord's Agent, Jonathan Marchesan, the Landlord's Legal Representative, Nicholas Marchesan, and the Tenant attended the hearing.

Determinations:

Preliminary Issue

1. The Tenant requested that the application be dismissed as it was filed incorrectly and not by the Landlord.
2. The Landlord was called to attend the hearing. The Landlord confirmed that he was aware of this application and signed it.
3. The electronic version of the application named the Landlord's Agent, Johnathan Marchesan, as the signatory, however given the direct testimony of the Landlord I am satisfied that he was aware and participated in the filing of this application.
4. The application claimed rent arrears of \$7,410.00 owing for the rental period of November 1, 2021 to May 1, 2022. At the hearing, the Landlord requested to amend the application to reflect rent arrears of \$7,400.00 owing for the rental period of January 1, 2022 to May 31, 2022. The amount of rent arrears owing was reduced by \$10.00.
5. The application is amended to reflect the correct rental periods. Given that the amount of the rent arrears being claimed was reduced, I find that the Tenant is not prejudiced by this amendment.

Adjournment Request - Denied

6. The Tenant's request for an adjournment was denied. I was satisfied that the Tenant had ample time to compile and serve the Landlord (and the LTB) his evidence before today's hearing. This application was filed in May 2022 and adjourned on January 17, 2023. The Tenant has had over eight months since the last hearing date to provide the Landlord and the LTB with his evidence. The Tenant may have had issues using the portal but he has not provided the Landlord with his evidence nor has he emailed the LTB his evidence.
7. The Tenant requested an adjournment as he has not been able to download his evidence into the portal. He stated that he requires some assistance as he had a hard time trying to do it. The Tenant confirmed that he has access to email.
8. The Landlord opposed any adjournment as this matter was previously adjourned in January 2023 due to lack of time in the hearing block. The Landlord also stated that this has been a 22 month tenancy where the Tenant has only paid one and half month's rent.

Rent arrears

9. 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.
10. As of the hearing date, the Tenant was still in possession of the rental unit.
11. The lawful rent is \$1,650.00. It is due on the 1st day of each month.
12. Based on the Monthly rent, the daily rent/compensation is \$54.25. This amount is calculated as follows: \$1,650.00 x 12, divided by 365 days.
13. The Tenant has not made any payments since the application was filed.
14. The Tenant did not dispute that the rent arrears owing to September 30, 2023 are \$33,800.00.
15. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
16. There is no last month's rent deposit.

Relief from Eviction

17. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
18. The Tenant stated that he is awaiting a decision for his WSIB claim and hasn't received any benefits. He stated that he was not aware that he could file for E.I. benefits while awaiting this decision. He also stated that he applied for O.W. and then returned to work for 1 day. He stated that his income for the last year was basically \$0.00. He also stated

that the Landlord was aware of his financial issues and agreement to pay him first and last rent to move out and then renege on this agreement.

19. The Landlord's Legal Representative submitted that there is no supporting evidence of any agreement, and in any event any agreement would be on the condition that the Tenant vacate the unit which hasn't occurred. The Landlord's Legal Representative also submitted that the Landlord's Agent has tried to assist him with moving to a new unit, however the Tenant failed to provide any details and uncooperative. The Landlord's Legal Representative further submitted that the Tenant is just taking advantage of the backlog and requested a standard eviction order.
20. The undisputed rent arrears currently outstanding are \$33,800.00, which is a significant increase since the application was filed seeking rent arrears \$7,400.00. The Tenant has not made any payments to the Landlord since the application was filed and has no ability to pay these arrears or the accruing rent. The Tenant has also had over a year to address his financial issues or find alternate accommodations. Therefore, in these circumstances I find that any further delay would be unfair to the Landlord.

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:**
 - \$35,636.00 if the payment is made on or before October 22, 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 22, 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 22, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$33,800.75. 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 \$54.25 per day for the use of the unit starting September 28, 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 22, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 23, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before October 22, 2023, then starting October 23, 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 October 23, 2023.

October 11, 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 April 23, 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 22, 2023

Rent Owing To October 31, 2023	\$35,450.00
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	\$35,636.00

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

Rent Owing To Hearing Date	\$33,614.75
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	- \$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	\$33,800.75
Plus daily compensation owing for each day of occupation starting September 28, 2023	\$54.25 (per day)