



Order under Section 69
Residential Tenancies Act, 2006

Citation: Thandi v Carbajal, 2023 ONLTB 65708

Date: 2023-10-03

File Number: LTB-L-024833-22

In the matter of: 3137 WALKER'S LINE
BURLINGTON ON L7M0E1

Between: Baljinder Thandi Landlord

And

Stephanie Carbajal Tenant

Baljinder Thandi (the 'Landlord') applied for an order to terminate the tenancy and evict Stephanie Carbajal (the 'Tenant') because:

- the Tenant has been persistently late in paying the Tenant's rent.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on April 17, 2023.

The Landlord and the Landlord's Legal Representative, F. Gomez and the Tenant and the Tenant's Legal Representative, S. Teal attended the hearing.

Determinations:

Preliminary issue

1. The Tenant's legal representative made submissions regarding non payment versus late payment and argued that the alleged late payments on the N8 notice are in fact non payments for which the Landlord served an N4 and received remedy based on an L1 application and subsequent order.
2. The Landlord's legal representative submits that not paying rent constitutes paying rent late.

3. Section 58 (1) 1 of the Residential Tenancies Act, 2006 states:

Notice at end of term or period, additional grounds

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58 (1) A landlord may give a tenant notice of termination of their tenancy on any of the following grounds:

1. The tenant has persistently failed to pay rent on the date it becomes due and payable
4. I interpret this to mean that if payment is not received on the day that it is due, then it is late, whether or not the tenant actually makes a payment. I accept that the Landlord also pursued an L1 application based on the same facts and time period as this L2 application, however, the remedies are distinct and the Landlord is entitled to pursue a remedy in relation to late payments.

L2 application

5. The Tenant was in possession of the rental unit on the date the application was filed.
6. On April 6, 2022, the Landlord gave the Tenant an N8 notice of termination with a termination date of June 30, 2022. The notice of termination contains the following allegations: The Tenant failed to pay the rent on or before the 1st day of the month for the months of December 2021, January 2022, February 2022, March 2022 and April 2022.
7. Since the notice of termination was served, the Tenant paid the rent late for the months of May 2022, June 2022, July 2022 and August 2022. The Tenant paid the rent on time since September 2022 to April 2023, with the exception of January 2023.
8. I find that the Tenant persistently failed to pay the rent on the day the rent is due for a period of 9 out of 17 months.

Relief from eviction

9. The Tenant testified that she experienced issues with regards to child support and since that issue has been worked out, she is able to continue to make rent payments on time. She has lived in the unit since 2019 and resides there with her children.
10. The Landlord is requesting an order terminating the tenancy, submitting that late payments impact the Landlord's ability to pay the mortgage.
11. The Tenant has been paying her rent on time consistently since September 2022, with the exception of January 2023. I am satisfied that if so ordered, the Tenant will continue to make rent payments on time.
12. 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 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.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.

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2. The Tenant shall pay the rent on or before the day that it is due for the period starting on November 1, 2023 until April 1, 2024.
3. If the Tenant fails to comply with the conditions set out in paragraph 2 of this order, 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. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.
4. The Tenant shall pay the Landlord \$186.00 which represents the cost to file this application.
5. 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.

October 10, 2023

Date Issued

Emily Robb

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.

