



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: Zaklama v Walton, 2023 ONLTB 63440

Date: 2023-10-03

File Number: LTB-L-032964-23

In the matter of: 68 MAPLEWOOD RD
MISSISSAUGA ON L5G2M6

Between: Nahed Zaklama and Maged Sadek Landlords

And

Dane Walton Tenant

Nahed Zaklama and Maged Sadek (the 'Landlords') applied for an order to terminate the tenancy and evict Dane Walton (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on September 13, 2023.

The Landlords and the Landlords' Representative, Yvette Bailey, attended the hearing. The Tenant's Representative, Michael Kippel, attended the hearing and provided evidence on behalf of the Tenant.

Determinations:

History of Application

1. This application was scheduled to proceed to a hearing on August 28, 2023. On August 28, 2023, the Landlords, the Landlords' Representative and the Tenant's Representative, Mr. Kippel, attended the hearing. At the hearing, Mr. Kippel requested an adjournment on the basis that the Tenant had a recent death in his family.
2. The Landlords opposed the adjournment on the basis of financial hardship. The Landlords' L1/L9 update claims that as of August 31, 2023, the Landlords are owed \$38,500.00, an amount exceeding the jurisdiction of the Board.
3. I decided to grant the adjournment. I became seized of the matter. During the hearing, Ms. Bailey and Mr. Kippel agreed to a return date of September 13, 2023. This date was selected to provide Mr. Kippel time to seek instructions from his client and to permit the Tenant with a reasonable opportunity to participate in the hearing.
4. On the adjourned date (September 13, 2023), the Landlords and the Landlords' Representative attended the hearing. Mr. Kippel attended the hearing on behalf of the Tenant. The Tenant did not attend the hearing.

5. At the start of the hearing, Mr. Kippel stated that he had instructions from his client. He stated that he did not intend to seek an adjournment, though discussions of an adjournment came up during the hearing.
6. Both representatives participated in selecting the adjourned date of September 13, 2023. Mr. Kippel did not submit anything prior to September 13, 2023 requesting a further adjournment for any reason nor did the Tenant submit any documentation to support a further adjournment. Furthermore, the Landlords would be prejudiced by a further delay since the rent sought in the Landlords' application already exceeds the jurisdiction of this Board and the Tenant is in possession of the unit, not paying rent. Therefore, the matter proceeded as scheduled.

Preliminary Matter: The Two N4 Notices

7. Mr. Kippel raised a preliminary issue regarding the Notice to End Tenancy for Non-Payment of Rent (N4 Notice) filed with the Board. Mr. Kippel submitted that the N4 Notice filed with the Board was not the N4 Notice that was served on the Tenant.
8. The parties agree that the N4 Notice filed with the Board was not the N4 Notice that was served on the Tenant. The N4 Notice filed with the Board contains the same information as the N4 Notice served on the Tenant, except that the Landlords' Representative added numbers on the second page of the N4 Notice to complete a calculation (albeit, an incorrect calculation).
9. The Landlords' Representative was candid about filling out the second page of the N4 Notice before submitted it with the application. She stated that she made the change because she noticed the N4 Notice was missing this calculation.
10. Regarding the N4 actually served on the Tenant, the second page of the N4 Notice contained the correct numbers (ie. February 1-28, 2023, \$5,500.00 and the Tenant paid \$0.00; and March 1-31, 2023, \$5,500.00 and the Tenant paid \$0.00). Moreover, the breakdown of the amount owing contained on page two of the notice was correct. The Landlords' Representative explained that the digital version of the N4 Notice did not allow the Landlords to fill out the total on the second page, so she added those numbers (incorrectly) when she submitted the N4 with the application to the Board.
11. Mr. Kippel stated that the fact that the amended N4 Notice was submitted in support of the L1 Application renders the L1 Application invalid, and, therefore, the Landlords' application should be dismissed on that basis.
12. Mr. Kippel further stated that the missing totals on page 2 of the N4 Notice served on the Tenant renders that N4 Notice invalid.
13. Mr. Kippel further relied on s. 197 of the Act to ask that this L1 Application be dismissed. Section 197 of the Act provides:

197 (1) The Board may dismiss an application without holding a hearing or refuse to allow an application to be filed if, in the opinion of the Board, the matter is frivolous or vexatious, has not been initiated in good faith or discloses no reasonable cause of action. 2006, c. 17, s. 197 (1).

(2) The Board may dismiss a proceeding without holding a hearing if the Board finds that the applicant filed documents that the applicant knew or ought to have known contained false or misleading information.

14. For the reasons that follow, I find that the N4 served on the Tenant is valid and that the application can proceed: The N4 notice actually served on the Tenant contained all material information consistent with the requirements of *Ball v. Metro Capital Property*, [2002] O.J. No. 5931. Specifically, it informed the Tenant of the amount lawfully owing and that was required to be paid in order to void the notice. Second, it put the Tenant on notice that in the event that amount was unpaid, the tenancy would be terminated. That is, the Tenant knew exactly what case needed to be met on a termination hearing before the Board. The fact that page 2 of the notice did not contain a total of the amount owing is not a fatal flaw. No reasonable argument was provided as to why it would be.
15. Regarding the argument that the application ought to be dismissed pursuant to section 197 of the Act, the allegation that the N4 filed with the Board contained misleading information is a serious one. There is simply no evidence of intentional filing of misleading information. Rather, based on submissions made by the Landlord's Representative, it would appear that the Landlord's Representative intended to assist the Board when she amended and filed an N4. She does not appear to have intended to mislead.
16. Although I agree that documents filed with the Board ought to be the same documents served on the parties and the Landlord ought not to have "amended" the N4 filed with the Board, there was no prejudice to the Tenant in this case. The parties did not consent to service through the LTB's online portal and the N4 served on the Tenant contained correct information. As such, the incorrect notice *filed* with the Board is not considered served. It is merely a document submitted in support of an application and as it contains incorrect information, it can be disregarded.
17. In short, as the parties did not consent to service through the LTB's online portal and the correct N4 was served on the Tenant, I find that the amended N4 Notice does not invalidate the N4 Notice served on the Tenant and that this is the notice that must be considered by the Board.
18. Given my finding that the notice of termination served on the Tenant is valid, I proceeded to determine arrears.

Calculation of Rent Arrears

A. Last Month's Rent

19. Mr. Kippel stated that the L1 Application does not account for \$5,500.00 that was paid to the Landlord on account of last month's rent deposit, nor the interest that would have accrued on that amount since it was paid in June of 2021. Mr. Kippel is relying on the lease agreement and an OREA Agreement to Lease document which indicates that first and last month's rent would be paid to the Landlords.
20. The Landlords said that, despite what is stated on the lease agreement and OREA document, \$5,500.00 was not paid towards the last months rent and that occupancy was nonetheless provided. The Landlords stated that at the start of the tenancy, the Tenant pre-paid all rent for the first year of the tenancy and nothing further.
21. Although the OREA agreement indicates that a last month's rent deposit would be paid, the Tenant's representative did not produce any documentation, such as receipts, showing as the actual payment of a deposit. Furthermore, the evidence provided by the Tenant through Mr. Kippel is hearsay evidence and is weighted accordingly.
22. I favour the direct testimony of the Landlords' on this issue. The Landlords were detailed in explaining how the tenancy came about and the manner in which pre-paid rent was collected. I accept that occupancy was provided even though a last months rent was not paid and I accept that the Landlord waived this requirement given no direct evidence that anything was actually paid.
23. I find that there is no deposit currently held by the Landlords.

B. Rent Arrears

24. The lawful rent is \$5,500.00. It is due on the 1st of each month.
25. As of the hearing date, the Tenant was still in possession of the rental unit.
26. Based on the Monthly rent, the daily rent/compensation is \$180.82. This amount is calculated as follows: \$5,500.00 x 12, divided by 365 days.
27. The Tenant has not made any payments since this application was filed.
28. The rent arrears owing to September 30, 2023 are \$44,000.00.
29. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Section 82

30. At the hearing, Mr. Kippel stated that the Tenant was not raising section 82.

Section 83

31. Mr. Kippel submits that it would not be unfair to postpone the eviction. Mr. Kippel submits that the Tenant lives at the rental unit with his children. He states that the Tenant and his family want to remain in the rental unit and can pay whatever amount the Board orders by October 31, 2023. Mr. Kippel seeks to postpone the eviction under October 31, 2023.
32. The Landlords oppose this request and seek a standard order. The Landlords testified about the impact that the Tenant's failure to pay rent has caused to both financially and to their health. The Landlords stated that it is costing them approximately \$9,000.00 per month to pay for the expenses associated with the rental property, including mortgage payments.
33. The Landlords pointed out that the Tenant has not made any efforts to pay rent for seven months. This has caused them hardship.
34. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. Other than Mr. Kippel's statement regarding payment of rent, the Tenant has not demonstrated that he will be making any payment towards rent. A denial or delay to the eviction is prejudicial 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:**
 - \$49,686.00 if the payment is made on or before October 14, 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 14, 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 14, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$35,000.00 (reduced to the monetary jurisdiction of the Board). This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. There is no rent deposit and or interest that the Landlord owes. See Schedule 1 for the calculation of the amount owing.

6. If the Tenant does not pay the Landlord the full amount owing on or before October 14, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 15, 2023 at 6.00% annually on the balance outstanding.
7. If the unit is not vacated on or before October 14, 2023, then starting October 15, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
8. 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 15, 2023.

October 3, 2023

Date Issued

Julia Toso

Member, Landlord and Tenant Board

15 Grosvenor St, 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.

**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 14, 2023

Rent Owing To October 31, 2023	\$49,500.00
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 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	\$49,686.00

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

Rent Owing To Hearing Date	\$40,850.00
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 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	\$41,036.00
AMOUNT TO BE PAID PER BOARD JURISDICTION	\$35,000.00

