



Order under Section 69 Residential Tenancies Act, 2006

Citation: Marignani v Newton, 2023 ONLTB 64788

Date: 2023-09-27

File Number:
LTB-L-046675-22

In the matter of: 7, 1 AUTUMN AVE
SCARBOROUGH ON M1K3L7

Between: Zena Marignani Landlord

And

Charles Newton Tenant

Zena Marignani (the 'Landlord') applied for an order to terminate the tenancy and evict Charles Newton (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

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

The Landlord's representative Elaine Page and the Tenant attended the hearing.

Determinations:

Notice of Termination

1. After the hearing I issued interim order LTB-L-046675-22-IN on August 30, 2023. In that order I indicated that the Landlord's certificate of service for their Notice to End Tenancy Early for Non-payment of Rent (N4 Notice) was blank. The Landlord was given until September 8, 2023 to upload a readable certificate of service.
2. On August 31, 2023 the Landlord uploaded a readable copy of their certificate of service. Upon review of that document, I have no concerns with when or how the N4 notice was served.

3. The Tenant was given until September 15, 2023 to write to the Board to indicate whether he contests when or if he received the N4 notice. The Tenant did not do so on or before that date. As such, I will issue a final order.

File Not Closed Until the Issuance of this Order

4. After the issuance of my interim order, a letter was erroneously prepared indicating that the file had been closed. I am unsure whether that letter was sent to the parties. Regardless, this file is not closed until the parties receive this final order.

The Application

5. The Tenant did not void the N4 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.
6. As of the hearing date, the Tenant was still in possession of the rental unit.
7. The lawful rent is \$1,644.73. It is due on the 1st day of each month.
8. Based on the Monthly rent, the daily rent/compensation is \$54.07. This amount is calculated as follows: \$1,644.73 x 12, divided by 365 days.
9. The Tenant has paid \$9,731.07 to the Landlord since the application was filed.
10. The rent arrears owing to August 31, 2023 are \$13,014.31.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. The Landlord collected a rent deposit of \$1,644.73 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.
13. Interest on the rent deposit, in the amount of \$22.31 is owing to the Tenant for the period from February 1, 2023 to August 17, 2023.
14. The Tenant requests relief from eviction in the form of a repayment plan. The Tenant testified that he fell into arrears because health issues caused him to be out of work. As of the hearing date the Tenant's source of income was Ontario Works but the Tenant was intending to return to work at the end of August 2023. The Tenant lives in the rental unit with his girlfriend but was unsure of her income.
15. The Landlord is opposed to a repayment plan.
16. I do not think it would be fair in the circumstances to impose a repayment plan because I am not satisfied that the Tenant will abide by it for two reasons. First, the Tenant's payment history does not support that he will abide by a repayment plan. Second, the Tenant's current income on Ontario Works would not support a repayment plan and the Tenant did

not yet have confirmation from his doctor that he could go back to work nor any supporting documentation to show that he will be returning to work at the end of August 2023.

17. The Tenant requested that the eviction be postponed by two months from the hearing date for him and his family to find a new place to live. The Tenant lives in the rental unit with his girlfriend and two young children. There is also a young child who lives there part-time on weekends.
18. The Landlord is opposed to any delay past September 30, 2023.
19. 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 October 15, 2023 pursuant to subsection 83(1)(b) of the Act. This is just shy of the two months requested and will provide the Tenant with time to find new living accommodations. I have not postponed the eviction any further because of the large amount of outstanding arrears and because the Landlord has been waiting a significant amount of time for repayment.

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:**
 - \$14,845.04 if the payment is made on or before September 30, 2023. See Schedule 1 for the calculation of the amount owing.
- OR**
- \$16,489.77 if the payment is made on or before October 15, 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 15, 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 15, 2023.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$10,807.73. 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 \$54.07 per day for the use of the unit starting August 18, 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 8, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 9, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before October 15, 2023, then starting October 16, 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 16, 2023.

September 27, 2023

Date Issued

Amanda Kovats

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 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 September 30, 2023

Rent Owing To September 30, 2023	\$24,390.11
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$9,731.07
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	\$14,845.04

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before October 15, 2023

Rent Owing To October 31, 2023	\$26,034.84
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$9,731.07
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	\$16,489.77

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

Rent Owing To Hearing Date	\$22,019.84
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$9,731.07
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	- \$1,644.73
Less the amount of the interest on the last month's rent deposit	- \$22.31

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	\$10,807.73
Plus daily compensation owing for each day of occupation starting August 18, 2023	\$54.07 (per day)