



Order under Section 69 Residential Tenancies Act, 2006

Citation: Donovan v Wojas, 2023 ONLTB 57163

Date: 2023-09-19

File Number: LTB-047963-22

In the matter of: 5 SMITH LANE
KINGSTON ON K7K4V7

Between: Michael Leslie Donovan and Anne Patricia Donovan Landlords

And

Stella Wojas Tenant

Michael Leslie Donovan and Anne Patricia Donovan (the 'Landlords') applied for an order to terminate the tenancy and evict Stella Wojas (the 'Tenant') because:

- the Tenant did not pay the rent that the Tenant owes;
- the Tenant has been persistently late in paying the Tenant's rent;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlords or another tenant;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises.

This application was heard by videoconference on August 9, 2023.

The Landlords' Representative Lorrie Mccullough and the Tenant attended the hearing.

Determinations:

1. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the Tenant must vacate the rental unit by October 10, 2023 and pay \$3,672.28 for arrears up to the hearing date and the application fee not including any daily compensation.

L1 Application

2. The Landlords served the Tenant with a valid Notice to End Tenancy Early for Nonpayment 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.
3. As of the hearing date, the Tenant was still in possession of the rental unit.
4. The lawful rent is \$1,439.40. It is due on the 1st day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$47.32. This amount is calculated as follows: \$1,439.40 x 12, divided by 365 days.
6. The Tenant has paid \$16,790.00 to the Landlords since the application was filed.
7. Based on the Landlords' evidence which consisted of a rent ledger for all of the months claimed (Landlords Exhibit 1 at pp. 8-11), I find that the rent arrears owing to August 31, 2023 are \$4,499.80.
8. The Tenant disagreed with the arrears owed and stated she only had \$200 arrears for August 2023 without providing any evidence that prior months were paid. In the absence of any supporting evidence, I do not find that the Tenant has proven she has made any additional payments not accounted for in the Landlords' evidence.
9. The Landlords incurred costs of \$186.00 for filing the application and are entitled to reimbursement of those costs.
10. There is no last month's rent deposit.

L2 Application

N8 Notice – Persistent Late Payments

11. On August 23, 2022, the Landlords gave the Tenant an N8 notice of termination deemed served that date. The notice of termination contains the following allegations: the Tenant has persistently paid rent late.
12. I find that the Tenant has persistently failed to pay the rent on the date it was due. The rent is due on the 1st day of each month. The rent has been paid late 20 times in the past 20 months:
 - January 1, 2021 paid on January 8
 - February 1, 2021 paid on February 3
 - March 1, 2021 paid on March 5
 - April 1, 2021 paid on April 15
 - May 1, 2021 paid on May 6
 - June 1, 2021 paid on June 8
 - July 1, 2021 paid on July 9

- August 1, 2021 paid on August 19 (partial)
- September 1, 2021 paid on September 2 (partial, covering August)
- October 1, 2021 paid on October 1 (partial, covering September)
- November 1, 2021 paid on November 4 (partial, covering October)
- December 1, 2021 paid on December 3 (partial, covering November)
- January 1, 2022 paid on January 11 (partial, covering December)
- February 1, 2022 paid on February 24 (partial, covering January)
- March 1, 2022 paid on March 30 (partial, now 2 months outstanding)
- April 1, 2022 paid on April 22 (\$4000 payment covering 3 months)
- May 1, 2022 paid on May 1 (partial not full)
- June 1, 2022 paid on July 1 (partial not full)
- July 1, 2022 paid on August 3 (partial, 3 months outstanding)
- August 1, 2022 was not paid by the date the N5 notice was served.

13. The Tenant has continued to make late payments after the notice was served including:

- September 1, 2022 paid on September 27
- October 1, 2022 paid on October 24 and December 1
- November 1, 2022 paid on December 1, 2022
- January 1, 2023 paid on January 3, 2023
- March 1, 2023 paid on March 6, 2023
- April 1, 2023 paid on April 23, 2023
- May 1, 2023 paid on May 26, 2023
- June 1, 2023 paid on June 28, 2023
- August 1, 2023 paid on August 8, 2023

14. Most of these payments were partial payments going back to prior months with the Tenant being 3-4 months behind.

N5 Notice – Substantial Interference

15. On June 23, 2022, the Landlords gave the Tenant an N5 notice of termination deemed served that date. The N5 notice contains the following allegations: many occupants being charged illegal rent by a person not on the lease agreement, damages, health and safety fire violations, constant yelling and fighting at all hours, throwing knives into neighbouring yards, leaving sharp knives around the residential complex.
16. The N5 notice includes a summary of timeline of events with specific dates of noise complaints (e.g. March 31, 2022 at 9:44am, May 24, 2022 at 10:50am), the knives complaints (e.g. April 22, 2022 at 1:19pm, May 24, 2022 at 10:50am), and an inspection conducted on May 26, 2022 at 2:42pm revealing graffiti on walls, signs of multiple people living in the unit (e.g. beds in the dining room), damaged floors, walls, and doors, extreme cluttering blocking egress, overloading of electrical outlets, extreme accumulation of filth, junk, and waste, and bathroom faucets left running.

17. The N5 notice states that the Tenant must pay \$5,000 to repair the damaged property or \$3,000 to replace the damaged property.
18. The portion of the N5 notice alleging substantial interference was served pursuant to section 64(1) of the Act which states:

64 (1) A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.

19. At the hearing, the Landlords submitted a Document Book of photos of the rental unit and correspondence of the complaints (Landlords Exhibit 1) and videos of the May 26 inspection (Landlords Exhibit 2A, 2B).
20. The Document Book establishes the knives complaints with photos thereof (at p. 13), the noise complaints (at pp. 12, 14, 45), and excessive accumulation of garbage and objects within the rental unit as well as outside the rental unit which is also obstructing other tenant's access to their rental unit and parking, and is a by-law violation (at pp. 14, 21, 4143, 45-51). The accumulation of garbage also allegedly had a very strong foul odour.
21. The two videos submitted also demonstrate excessive accumulation of garbage and objects inside the rental unit.
22. At the hearing, the Tenant only contested the late and non-payments of rent but none of the allegations in the N5 notice, Document Book, and videos. The Tenant's cross-examination on the N5 notice was limited to whether she repaired any of the damages which is discussed further below. The Tenant also acknowledged that there is excessive garbage outside that had to be taken away in a truck at the Landlords' expense.
23. Based on the uncontested evidence, I find that the Tenant substantially interfered with the reasonable enjoyment of other tenants by throwing and leaving knives around their rental unit, making excessive noise resulting in repeated noise complaints from multiple parties, and the excessive accumulation of garbage in and around their rental units which caused a strong odour and obstructed other tenants' ability to access parking. The garbage outside the rental unit also substantially interfered with the Landlords' interest as it constituted a by-law violation which was only corrected after the Landlords paid for a truck and junk management company to remedy the situation. I have not found there to be too many occupants as this reason was not checked in the N5 notice and there was no housing standards submitted into evidence.

N5 Notice – Damages

24. The portion of the N5 notice alleging undue damages is invalid and cannot result in termination as there are three different amounts claimed. This is a distinct issue from

whether compensation can be awarded under s. 89 which does not require an N5 notice of termination. It is also immaterial as I have already found the Landlords proved the portion of the N5 alleging substantial interference and the N8 for late payments, both non-voidable grounds of termination.

25. The N5 notice has two different amounts to void the damages claim: \$5,000 to repair the damaged property OR \$3,000 to replace the damaged property.
26. Schedule A to the N5 notice combines both amounts for a total \$8,000 to void the damages claim which the Landlords also submitted at the hearing.
27. While I understand that Schedule A was intended to be the total amount, a tenant receiving this notice may be reasonably confused by it for claiming three different amounts, especially when \$5,000 and \$3,000 are separated by an "OR". I therefore cannot order an eviction on this basis as the Tenant did not have a fair opportunity to void the notice on this basis.

Claim for Compensation - Damages

28. While the Landlords led evidence about their costs to repair the undue damage to the rental unit, I cannot issue an order for this amount as the Landlords' L2 application does not include a claim for compensation for any damages. The fact that the Landlords served the Tenant with a notice of termination due to damages does not remove the need for the Landlords to indicate on the application itself that they are also seeking compensation for damages. Section 89 specifically requires the Landlords to apply to the Board to claim compensation. The Landlords may be able to file a new application at the Board to claim compensation for damages as I have never considered this claim in this hearing.

Relief from eviction

29. 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 10, 2023 pursuant to subsection 83(1)(b) of the Act.
30. While the Tenant never explicitly requested a delayed eviction, I have considered her circumstances, including the fact that she recently experienced death in her family, had a health condition, as well as other issues related to taxes and receiving her pension, and am satisfied that it would not be unfair to provide her 2 more weeks to organize her affairs and find another place to live.
31. As the tenancy is being terminated pursuant to the L2 application, this is a non-voidable order. That means that the Tenant cannot continue the tenancy by paying all of the arrears.

It is ordered that:

1. The tenancy between the Landlords and the Tenant is terminated. The Tenant must move out of the rental unit on or before October 10, 2023.

2. The Tenant shall pay to the Landlords \$3,672.28. 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.
3. The Tenant shall also pay the Landlords compensation of \$47.32 per day for the use of the unit starting August 10, 2023 until the date the Tenant moves out of the unit.
4. If the Tenant does not pay the Landlords the full amount owing on or before October 10, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 11, 2023 at 6.00% annually on the balance outstanding.
5. If the unit is not vacated on or before October 10, 2023, then starting October 11, 2023, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or after October 11, 2023.

2023 ONLTB 57163 (CanLII)

September 19, 2023

Date Issued

Elan Shemtov

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 10, 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 if the tenancy is terminated

Rent Owing To Hearing Date	\$20,276.28
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlords since the application was filed	- \$16,790.00
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 Landlords owe 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 Landlords	\$3,672.28
Plus daily compensation owing for each day of occupation starting August 10, 2023	\$47.32 (per day)