



Order under Section 69 Residential Tenancies Act, 2006

Citation: Parker v Halstead, 2023 ONLTB 61528

Date: 2023-09-13

File Number: LTB-L-027916-23

In the matter of: 2, 277 JARVIS ST
OSHAWA ON L1G5K8

Between: Margaret Parker Landlord

And

Don-Neil Halstead Tenants Benjamin Jones

Margaret Parker (the 'Landlord') applied for an order to terminate the tenancy and evict Don-neil Halstead and Benjamin Jones (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on August 28, 2023. The Landlord's legal representative Jackie Struthers and the Tenant Don-Neil Halstead attended the hearing.

Determinations:

Section 82:

1. At the hearing the Tenant attempted to raise maintenance concerns pursuant to section 82 of the *Residential Tenancies Act, 2006* (the Act) which states:

82 (1) At a hearing of an application by a landlord under section 69 for an order terminating a tenancy and evicting a tenant based on a notice of termination under section 59, the Board shall permit the tenant to raise any issue that could be the subject of an application made by the tenant under this Act if the tenant,

- (a) complies with the requirements set out in subsection (2); or
- (b) provides an explanation satisfactory to the Board explaining why the tenant could not comply with the requirements set out in subsection (2)

- (2) The requirements referred to in subsection (1) are the following:

1. The tenant shall give advance notice to the landlord of the tenant's intent to raise the issue at the hearing.
 2. The notice shall be given within the time set out in the Rules.
 3. The notice shall be given in writing and shall comply with the Rules.
2. In accordance with section 82(2) of the Act, the Board's Rules of Procedure provide as follows:
- 19.4.** Unless the LTB has directed or ordered otherwise, a tenant who intends to raise issues under sections 82(1) or 87(2) of the RTA during a hearing for a landlord's application about rent arrears shall provide the other parties and the LTB with the following at least 7 days before the scheduled CMH or hearing:
1. a written description of each issue the tenant intends to raise; and
 2. a copy of all documents, pictures and other evidence that the tenant intends to rely upon at the hearing.
3. The Tenants failed to comply with the notice / disclosure requirements of Rule 19.4. As of the date of the hearing, the Tenants had not served on the Landlord a list of issues to be raised or any evidence to support their section 82 concerns. The Tenant was unable to provide any explanation as to why he did not comply with Rule 19.4 of the Act.
4. As the Tenants did not comply with the Board's Rules of Procedure with respect to disclosing their section 82 evidence, the Tenants are not entitled to raise the section 82 concerns and the matter proceeded to hear the Landlord's claim for non-payment of rent only.

Non-payment:

5. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Nonpayment of Rent (N4 Notice). The Tenants 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.
6. As of the hearing date, the Tenants were still in possession of the rental unit.
7. The lawful rent is \$2,200.00. It is due on the 1st day of each month.
8. Based on the Monthly rent, the daily rent/compensation is \$72.33. This amount is calculated as follows: \$2,200.00 x 12, divided by 365 days.
9. The Tenants have not made any payments since the application was filed.
10. The rent arrears owing to August 31, 2023 are \$12,100.00.

11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. There is no last month's rent deposit.

Relief from eviction:

13. 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 September 30, 2023 pursuant to subsection 83(1)(b) of the Act.
14. The arrears of rent are substantial, and the Tenants have made no payments since the application was filed. The Tenant Don-Neil Halstead testified at the hearing that he suffered a back injury in January 2023 and as such has been unable to work. The Tenant is currently awaiting on his WSIB application to be approved and to receive benefit payments.
15. The current household income is insufficient to pay the monthly rent or the arrears owing. The Tenant requested additional time to either vacate the rental unit or to pay the arrears in full.
16. I am alive to the fact that the Tenant has experienced some unforeseen hardship and as such, find that it would not be unfair to delay termination of tenancy to September 30, 2023 to allow the Tenants some additional time to secure alternate housing. I find that delaying beyond September 30, 2023 would be prejudicial to the Landlord as there is currently no concrete plan from the Tenants to repay the arrears or ongoing rent.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$14,486.00 if the payment is made on or before September 30, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after September 30, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
4. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before September 30, 2023**

5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$12,111.24. 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 Tenants shall also pay the Landlord compensation of \$72.33 per day for the use of the unit starting August 29, 2023 until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before September 24, 2023, the Tenants will start to owe interest. This will be simple interest calculated from September 25, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before September 30, 2023, then starting October 1, 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 1, 2023.

September 13, 2023

Date Issued

Fabio Quattrociocchi

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 1, 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	\$14,300.00
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	\$14,486.00

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

Rent Owing To Hearing Date	\$11,925.24
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	- \$
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	\$12,111.24
Plus daily compensation owing for each day of occupation starting August 29, 2023	\$72.33 (per day)