



Order under Section 69 Residential Tenancies Act, 2006

Citation: Hazelview Properties v Adewumi, 2023 ONLTB 61587

Date: 2023-09-12

File Number: LTB-L-031874-23

In the matter of: 1301, 2850 CEDARWOOD DR Ottawa
ON K1V8Y4

Between: Hazelview Properties Landlord

And

Donatus Edi Tenant

Hazelview Properties (the 'Landlord') applied for an order to terminate the tenancy and evict Adefemi Adewumi and Donatus Edi (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 agent Alisha Goodine, legal representative Alan Kouri and both the named Tenants attended the hearing.

Determinations:

Named parties:

1. At the commencement of the hearing, Adefemi Adewumi requested that he be removed as a tenant and responding party to the application. For the reasons set out below, the application is amended to remove Adefemi Adewumi as a tenant and responding party to the application.
2. The parties agreed that Mr. Adefemi Adewumi has not resided in the rental unit since October 31, 2022. Mr. Adewumi further testified that he no longer has access to the rental unit. The Tenant Donatus Edi currently resides in the rental unit and agreed that his former roommate and/or co-tenant physically vacated the unit in October 2022.
3. The Landlord's L1 application was filed on April 20, 2023, which was approximately six months after Mr. Adewumi vacated the rental unit.

4. In *1162994 Ontario Inc. v. Bakker, 2004 CanLII 59995* (ON CA), the Ontario Court of Appeal determined that “possession of a rental unit refers to some form of control over that unit as demonstrated by factors such as access to, use of, or occupation of the unit.”
5. Based on the evidence before the Board, I find that Mr. Adewumi vacated the rental unit prior to the L1 application being filed by the Landlord. The Act and the Board’s Interpretation Guidelines are clear that a tenant must be in possession of the rental at the time of filing a L1 application.
6. As Mr. Adewumi was not in possession of the rental unit at the time the L1 application was filed, the Landlord cannot pursue the application against him and as such, he must be removed as a party to the application.

Non-payment:

7. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment 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.
8. As of the hearing date, the Tenant was still in possession of the rental unit.
9. The lawful rent is \$1,647.41. It is due on the 1st day of each month.
10. Based on the Monthly rent, the daily rent/compensation is \$54.16. This amount is calculated as follows: \$1,647.41 x 12, divided by 365 days.
11. The Tenant has paid \$1,800.00 to the Landlord since the application was filed.
12. The rent arrears owing to August 31, 2023 are \$16,796.84.
13. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
14. The Landlord collected a rent deposit of \$1,122.00 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.
15. Interest on the rent deposit, in the amount of \$82.95 is owing to the Tenant for the period from January 23, 2019 to August 28, 2023.
16. The Tenant disputed having to pay the full monthly rent and arrears. The Tenant argued that he and Mr. Adewumi agreed to split the rent payments and that he should only be responsible for his portion.
17. The tenancy is a joint a severable agreement. As such, although the tenants and/or occupants agreed to divide the rent payments amongst themselves, this does not change the nature of the tenancy, which includes one rental unit and a set amount for rent. The Tenant may wish to address his concerns with Mr. Adewumi and the unpaid portion of rent in a court of competent jurisdiction.

Relief from eviction:

18. 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.
19. In my view, the tenancy is not viable. The current Tenant appeared reluctant at the hearing to accept full responsibility for all the arrears and ongoing monthly rent. As such, any further delay would only prejudice the Landlord as the arrears would continue to accumulate.

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:**
 - \$18,630.25 if the payment is made on or before September 30, 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 September 30, 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 September 30, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$15,646.96. 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 \$54.16 per day for the use of the unit starting August 29, 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 September 23, 2023, the Tenant will start to owe interest. This will be simple interest calculated from September 24, 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 12, 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	\$20,244.25
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,800.00
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	\$18,630.25

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

Rent Owing To Hearing Date	\$18,465.91
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,800.00
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	- \$1,122.00
Less the amount of the interest on the last month's rent deposit	- \$82.95
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	\$15,646.96
Plus daily compensation owing for each day of occupation starting August 29, 2023	\$54.16 (per day)