



Order under Section 69 Residential Tenancies Act, 2006

Citation: EURO PROPERTIES INC. v Withenshaw, 2023 ONLTB 60125

Date: 2023-09-01

File Number: LTB-L-031501-23

In the matter of: 75 ARBOUR GLEN CRES
LONDON ON N5Y1Z9

Between: EURO PROPERTIES INC. Landlord

And

Jennifer Withenshaw Tenant

EURO PROPERTIES INC. (the 'Landlord') applied for an order to terminate the tenancy and evict Jennifer Withenshaw (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on August 16, 2023.

The Landlord's agent, Tomas Soural, and the Tenant attended the hearing.

Determinations:

1. 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.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$655.20. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$21.54. This amount is calculated as follows: $\$655.20 \times 12$, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to August 31, 2023 are \$9,172.80.

7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord seeks a standard, voidable eleven-day order.

Tenant's Evidence

9. The Tenant does not dispute the arrears as claimed by the Landlord. She testified that she has been withholding rent from the Landlord due to the maintenance issues he has failed to address in her unit.
10. The Tenant seeks to move out of the rental unit and wants a rent abatement for her claims pursuant to subsection 82(1) of the Act.
11. The Tenant confirmed that she filed evidence with the Board but did not provide the Landlord with a copy because she did not know she had to do so.
12. As I explained to the Tenant, the notice of hearing stipulates what a tenant must do if they wish to raise their own claims on an application for rent arrears. I am not satisfied that the Tenant was unaware of the requirements she had to fulfill to raise her claims – they were stipulated on the second page of the notice of hearing. As such, I could not hear the Tenant's claims, but I informed the Tenant that this did not prevent her from filing her own application.
13. The Tenant then proceeded to dispute receiving the N4 notice of termination – alleging that there was trouble with her mailbox which is located outside her door. She confirmed that no one has stolen her mail, that she is the only one with access to the mailbox and that she did not make the Landlord aware of this issue.
14. The Landlord testified that the Tenant has always adopted this strategy that she hasn't received her mail but has never informed him of any issue with the mail. He testified that he mailed the notice of termination to her on March 15, 2023 as affirmed on the certificate of service.

ANALYSIS

15. Based on the evidence before the Board I find, on a balance of probabilities, that the Tenant received the N4 notice of termination. I say this based on the Tenant's own evidence that she has not had anyone steal her mail before nor does anyone else have access to her mailbox. I also say this based on the Tenant's confirmation that she did not inform the Landlord of the mailbox issue – a reasonable person would not have done the same.
16. I also find that the arrears and costs owing to August 31, 2023 total \$9,358.80. This is undisputed by the parties.

17. Given that the Landlord has not received any rent for the past 14 months, the quantum of arrears owing, along with the fact that the Tenant wants to leave, I find it appropriate to grant the standard order.
18. The Landlord collected a rent deposit of \$680.00 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.
19. Interest on the rent deposit, in the amount of \$10.62 is owing to the Tenant for the period from January 1, 2023 to August 16, 2023.
20. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), **including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant** and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
21. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

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:**
 - \$10,014.00 if the payment is made on or before September 12, 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 12, 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 12, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$8,357.62. 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 \$21.54 per day for the use of the unit starting August 17, 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 12, 2023, the Tenant will start to owe interest. This will be simple interest calculated from September 13, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before September 12, 2023, then starting September 13, 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 September 13, 2023.

September 1, 2023

Date Issued

Sonia Anwar-Ali

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 March 13, 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 12, 2023

Rent Owing To September 30, 2023	\$9,828.00
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	\$10,014.00

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

Rent Owing To Hearing Date	\$8,862.24
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	- \$680.00
Less the amount of the interest on the last month's rent deposit	- \$10.62
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	\$8,357.62
Plus daily compensation owing for each day of occupation starting August 17, 2023	\$21.54 (per day)