



Order under Section 69 Residential Tenancies Act, 2006

Citation: Butt v Wilson, 2023 ONLTB 59585

Date: 2023-08-31

File Number: LTB-L-047621-22

In the matter of: 4, 636 ST FELIX ST
CORNWALL ON K6H5B3

Between: Talat Butt Landlord

And

Michelle Wilson Tenant

Talat Butt (the 'Landlord') applied for an order to terminate the tenancy and evict Michelle Wilson (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (L1 application).

The Landlord also applied for an order to terminate the tenancy and evict the Tenant because:

- the Tenant has been persistently late in paying the Tenant's rent.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date (L2 application).

This application was heard by videoconference on August 10, 2023.

The Landlord, the Landlord's Legal Representative, G. Foss, and the Tenant attended the hearing.

Determinations:

Request for Adjournment Denied – Section 82

1. The Tenant alleges that the Landlord is in breach of their obligations under the *Residential Tenancies Act, 2006* (Act) and requested an adjournment to retain legal representation.
2. The Tenant stated that she uploaded her supporting documents and evidence to the LTB portal on August 3, 2023. She also confirmed that she didn't send copies of the documents and evidence to the Landlord as she read the instructions as to only give a

copy to the Board. She acknowledged that her evidence isn't well organized which is why she is seeking legal representation.

3. The Landlord's Legal Representative submitted that the Landlord did not receive any disclosure from the Tenant regarding these allegations and is not able to open any of the documents the Tenant uploaded to the portal. The Landlord's Legal Representative opposed any adjournment as the Tenant has not paid rent for 13 months.
4. The Tenant's request for an adjournment was denied. The Tenant has had ample time and opportunity to retain legal representation prior to this hearing. This application was sent to the Tenant on June 19, 2023, nearly two months before the hearing.
5. The Tenant did not provide the Landlord written notice of the issues she intends to raise and/or the supporting evidence at least seven days in advance of the hearing date as required by subsection 82(2) of the Act and Board Rule of Procedure 19.4. The Tenant did not provide a reasonable explanation as to why she could not have complied with these requirements. Therefore, the Tenant's section 82 claims cannot be considered by the Board. The Tenant is entitled to raise these issues and seek a remedy by filing her own application at the Board.
6. The Notice of Hearing Package, which the Tenant did not dispute receiving, sets out the requirements for the parties to disclose any evidence to the other party as soon as possible but at least 7 days before the hearing. The Tenant's Notice of Hearing package also included a form titled "Issues a Tenant intends to Raise at a Rent Arrears Hearing." The preamble on this form contains the following statement:

A tenant who fails to provide the landlord and the Board with a written description of each issue will not be permitted to raise them at the hearing unless the Board Member is satisfied that the tenant could not comply with the requirements.

7. Rule 3.1(i) of the Board's Rules of Procedure states the following:

In addition to methods of service identified in the RTA a document may be served on a person or party, other than a party covered by Rule 3.3., by

- i. uploading it directly into TOP if the person or party receiving it has consented in writing to accept service through TOP.
8. There was no evidence before me that the Landlord consented in writing to accept service through the portal (TOP).
9. The Notice of Hearing Package also provides the following information:

REPRESENTATIVES or LEGAL ASSISTANCE

If you are a Tenant and wish to obtain legal advice, contact your local community legal clinic. To find your local legal clinic, contact Legal Aid Ontario at 1-800-668-8258. Please seek legal advice PRIOR to your hearing.

Tenant Duty Counsel has also created an online registration system to request legal assistance if you have a scheduled hearing which can be accessed at www.tdc.acto.ca

10. In addition, the Tenant had the opportunity to speak with Tenant Duty Counsel prior to the start of the hearing.

L1 application

11. 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.
12. As of the hearing date, the Tenant was still in possession of the rental unit.
13. The lawful rent is \$1,025.00. It is due on the 1st day of each month.
14. Based on the Monthly rent, the daily rent/compensation is \$33.70. This amount is calculated as follows: \$1,025.00 x 12, divided by 365 days.
15. The Tenant has not made any payments since the application was filed.
16. The Tenant did not dispute that the rent arrears owing to August 31, 2023 are \$13,325.00.

L2 application

17. The Landlord served a Notice to End Tenancy at the End of Term (N8 Notice) alleging that the Tenant has persistently paid the rent late pursuant to section 58 of the *Residential Tenancies Act, 2006* (the 'Act')
18. Section 58 of the Act states:

(1) A landlord may give a tenant notice of termination of their tenancy on any of the following grounds:

1. The tenant has persistently failed to pay rent on the date it becomes due and payable.
2. The rental unit that is the subject of the tenancy agreement is a rental unit described in paragraph 1, 2, 3 or 4 of subsection 7 (1) and the tenant has ceased to meet the qualifications required for occupancy of the rental unit.
3. The tenant was an employee of an employer who provided the tenant with the rental unit during the tenant's employment and the employment has terminated.
4. The tenancy arose by virtue of or collateral to an agreement of purchase and sale of a proposed unit within the meaning of the *Condominium Act, 1998* in good

faith and the agreement of purchase and sale has been terminated. 2006, c. 17, s. 58 (1).

(2) The date for termination specified in the notice shall be at least the number of days after the date the notice is given that is set out in section 44 and shall be the day a period of the tenancy ends or, where the tenancy is for a fixed term, the end of the term. 2006, c. 17, s. 58 (2).

19. The N8 Notice was served on the Tenant on July 22, 2022 and provided a termination date of September 30, 2022. The tenancy is currently month-to-month and rent is due on the 1st day of every month. I am satisfied that the N8 Notice was properly served in accordance with section 58 of the Act.
20. Based on the evidence before me, I find that the Tenant has been persistently late in paying the rent. The Tenant has paid the rent late or not at all every month except for June 2021 the period of May 1, 2021 to August 31, 2023. The Tenant did not provide any supporting evidence that the Landlord agreed to her paying the rent in two installments nor did her record of payments support this assertion.
21. The Landlord's Legal Representative submitted that the rent is due and payable on the 1st day of each month. He submitted that the Tenant paid the rent late every month from May 2021 to July 2022 except for June 2021 and then hasn't made any rental payments to the Landlord. The Landlord's Legal Representative relied on the N8 Notice and attached ledger in support of the Tenant's history of payments.
22. The Tenant stated that her tenancy started with a prior landlord and when she was laid off during COVID, her prior landlord allowed her to pay the rent in two payments. She stated that she advised the new Landlord, who took over around May 2021, that the rent would be split, she would pay half every two weeks.
23. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
24. The Landlord collected a rent deposit of \$1,025.00 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.
25. Interest on the rent deposit, in the amount of \$43.89 is owing to the Tenant for the period from May 18, 2020 to August 10, 2023.

Relief from Eviction

26. 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 not be unfair to postpone the eviction until September 30, 2023 pursuant to subsection 83(1)(b) of the Act.

27. The Landlord's Legal Representative requested a non-remedial order for termination. He submitted that the rent arrears owing are significant and the Tenant has not attempted to make any payments despite stating that she was working during the period of arrears and her live-in boyfriend receives a monthly fixed income. The Landlord's Legal Representative also submitted that the Landlord requires this rental income to pay the mortgage and other expenses for the property.
28. The Tenant stated that the stress of living at the rental unit has caused financial hardship. She stated that she doesn't want to live here but can't afford to move. She first lost her job in March 2023, then started working again in June, but lost that job as well. She stated that when the police are at the building at 1:00 a.m. it is hard to wake up and go to work due to her increased anxiety. She also stated that her boyfriend, who moved in last month can help pay going forward, but they are not in a position to pay the entire amount outstanding. She stated that she can pay \$1,000.00 every two weeks or she requested 2 months to move out.
29. The rent arrears currently outstanding are \$13,325.00, which is a significant increase since the application was filed seeking rent arrears \$1,025.00. The Tenant has not made any payments to the Landlord since the application was filed. Therefore, in these circumstances I find that ordering a repayment plan is not fair to the Landlord. Given that there is a last month's rent deposit it is fair to only delay the eviction until September 30, 2023.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before September 30, 2023
2. The Tenant shall pay to the Landlord \$11,754.11. 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.
3. The Tenant shall also pay the Landlord compensation of \$33.70 per day for the use of the unit starting August 11, 2023 until the date the Tenant moves out of the unit.
4. If the Tenant does not pay the Landlord the full amount owing on or before September 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 1, 2023 at 6.00% annually on the balance outstanding.
5. 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.
6. 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.

August 31, 2023

Date Issued

 Lisa Del Vecchio
 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 if the tenancy is terminated

Rent Owing To Hearing Date	\$12,637.00
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 of the last month's rent deposit	- \$1,025.00
Less the amount of the interest on the last month's rent deposit	- \$43.89
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	\$11,754.11
Plus daily compensation owing for each day of occupation starting August 11, 2023	\$33.70 (per day)