



Order under Section 69 Residential Tenancies Act, 2006

Citation: Hameed v Woodcock, 2023 ONLTB 56361

Date: 2023-08-31

File Number: LTB-L-054558-22

In the matter of: Basement Suite, 24 ST ANDREWS ST CAMBRIDGE
ON N1S1M4

Between: Nasir Hameed Landlord

And

Jessica Woodcock and Tylor Whalen Tenants

Nasir Hameed (the 'Landlord') applied for an order to terminate the tenancy and evict Jessica Woodcock and Tylor Whalen (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on April 11, 2023.

The following attended the hearing: the Landlord's legal representative Jane Dean, the Tenant Jessica Woodcock (JW), and the legal representative for Tenant Tylor Whalen, Mitchell Kent. The Tenant JW spoke with Tenant Duty Counsel prior to the hearing.

As of 11:16 a.m. Tyler Whalen (TW) was not personally present at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request prior to the hearing to adjourn.

Determinations:

Preliminary Issue – the Adjournment Request

1. TW's legal representative requested an adjournment as he was unable to contact his client despite attempting to do so immediately prior to the hearing and he did not have instructions.
2. The Landlord's legal representative objected to the adjournment request on the basis that the Landlord was ready to proceed, TW was the only Tenant remaining in the rental unit,

and almost all of the arrears were incurred after JW vacated the rental unit with the consent of the Landlord. The Landlord was prepared to enter into a consent with JW.

3. The matter was stood down for 50 minutes until 12:05 p.m. to permit the Tenant's legal representative to attempt to contact his client. JW also attempted to contact TW. By 12:29 p.m. when the matter was recalled, the Tenant's legal representative had been unable to contact his client.
4. The request for adjournment was denied. TW clearly had knowledge of the proceeding and was in fact able to participate as evidenced by the presence of his representative at the hearing. If TW failed to give adequate instructions to his representative, that does not justify an adjournment.

Preliminary Issue - The Update Sheet

5. The L1/L9 Update sheet is amended to reflect that the amounts on line 4 are not payments made but are in fact the amounts for line 5, new rent owing in the amount of \$12,600.00.

The Application

6. On August 25, 2022, the Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment 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.
7. Both Tenants were in possession of the rental unit on September 22, 2022, the date the application was filed.
8. JW and TW were in a relationship which deteriorated. JW vacated the rental unit on October 28, 2022, and served an N9 Tenant's Notice to End the Tenancy (N9 Notice) but did not serve an N15 severing the joint tenancy.
9. The lawful rent is \$1,800.00. It is due on the 1st day of each month.
10. Based on the Monthly rent, the daily rent/compensation is \$59.18. This amount is calculated as follows: \$1,800.00 x 12, divided by 365 days.
11. The Tenants have not made any payments since the application was filed.
12. The rent arrears owing to April 30, 2023 are \$18,000.00.
13. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

14. There is no last month's rent deposit.
15. This is a joint tenancy, which means that both Tenants were each individually liable for the entirety of the rent.
16. Pursuant to s. 47.2(1) of the *Residential Tenancies Act, 2006* (the 'Act'), a joint tenant may terminate his or her interest in a tenancy by giving notice of termination to the landlord if the tenant is deemed under subsection 47.3 (1) to have experienced violence or another form of abuse (N15 Notice). In this case, an N15 Notice was not used. Serving an N9 by one tenant does not sever a joint tenancy although the parties can agree to amend a tenancy to remove one tenant from a tenancy agreement. Such an amendment must be on consent.
17. The Landlord, however, agreed that the Landlord would not pursue JW for rent arrears for the period after October 31, 2022, which is the end of the last rental period before she vacated the unit pursuant to the N9 Notice.

Relief from Eviction

18. With respect to Tenant Tyler Whalen, I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenants and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. Tyler Whalen has paid no rent in over 5 months since Jessica Woodcock vacated the rental unit.

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:**
 - \$27,186.00 if the payment is made on or before September 11, 2023 (*less any payments made since the date of the hearing*). 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 11, 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 11, 2023.**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$17,036.98. This amount includes rent arrears and daily compensation 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 \$59.18 per day for the use of the unit starting April 12, 2023 until the date the Tenants move out of the unit.
7. Despite paragraphs 5 and 6 of this order, the Landlord shall not pursue or collect from JW, any amount owing under this order in excess of \$3,693.00, which represents 50% of the arrears owing to the date that JW vacated the rental unit and 50% of the filing fee incurred by the Landlord.
8. If the Tenants do not pay the Landlord the full amounts owing on or before September 11, 2023, the Tenants will start to owe interest. This will be simple interest calculated from September 12, 2023 at 6.00% annually on the balance outstanding.
9. If the unit is not vacated by the Tenants on or before September 11, 2023, then starting September 12, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. 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 12, 2023.

August 31, 2023

Date Issued

Margo den Haan

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 12, 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 TW must pay to void the eviction order and continue the tenancy if the payment is made on or before September 11, 2023

Rent Owing To September 11, 2023 <i>(less any payments made since the date of the hearing)</i>	\$27,000.00
Application Filing Fee	\$186.00
Less the amount of the credit that the Tenant is entitled to	- \$3,693.00
Total the Tenant must pay to continue the tenancy <i>(less any payments made since the date of the hearing)</i>	\$23,493.00

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

Rent Owing To Hearing Date	\$16,850.98
Application Filing Fee	\$186.00
Less the amount of the credit that the Tenant is entitled to	- \$3,693.00
Total amount owing to the Landlord	\$13,343.98
Plus daily compensation owing for each day of occupation starting April 12, 2023	\$59.18 (per day)

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