



Order under Section 78(6) Residential Tenancies Act, 2006

Citation: 1920/1944 Davisville Centre Inc. v Al Shehri, 2023 ONLTB 59737

Date: 2023-08-29

File Number: LTB-L-050133-23

In the matter of: 203, 1944 YONGE ST
TORONTO ON M4S3E5

Between: 1920/1944 Davisville Centre Inc. Landlord

And

Emad Al Shehri Tenant

1920/1944 Davisville Centre Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Emad Al Shehri (the 'Tenant') and for an order to have the Tenant pay the rent they owe because the Tenant did not meet a condition specified in the order issued by the LTB on June 21, 2023, with respect to application LTB-L-054726-22.

This application was heard by videoconference on August 22, 2023. The Landlord was represented at the hearing by Alethia Hall. The Tenant was represented at the hearing by Bill Burd.

Determinations:

1. The Landlord filed an application because the Tenant did not pay the rent the Tenant owes. This matter was settled by way of order LTB-L-0054726-22 issued on June 21, 2023, which required the Tenant to pay the outstanding arrears by way of a payment plan.
2. The order provides that the Landlord can apply to the LTB under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') without notice to the Tenant to terminate the tenancy and evict the Tenant if the Tenant does not meet certain condition(s) in the order. This application was filed within 30 days of the breach.

The Breach

3. The Landlord alleges the Tenant breached order LTB-L-0054726-22 by not paying the required \$1,842.49 in arrears payments on April 28, 2023, May 15, 2023, and June 15, 2023. The Tenant did not attend the hearing. His representative acknowledged the Tenant missed the arrears payments.

Relief from Eviction

4. Even though the Tenant breached the previous order I must determine whether it is appropriate to grant relief from eviction pursuant to s.83 of the Act.
5. According to s. 83 of the Act when the Board hears an application for an order evicting a tenant, the Board must consider whether there are any circumstances that support granting relief from eviction.
6. The Tenant's representative submits the Tenant was unable to make the required payments because this was not an amount he agreed to pay. The Tenant was not represented at the last hearing. The Tenant was unsure of the hearing process so he misstated his income and the amount he could pay monthly toward the arrears. Based on these circumstances, the Tenant's representative submits the Landlord's application should be denied and be replaced by a new payment plan. The Tenant's representative submits the Tenant is able to pay \$500.00 toward the arrears.
7. I find the submission of the Tenant's representative to be misguided.
8. Order LTB-L-0054726-22 was not based on a consent agreement. Instead, it was a determination made by a Member who heard the issue on its merits. The hearing Member had regard for all the relevant circumstances including the Tenant's monthly income and amount the Tenant would be willing to pay monthly.
9. The Tenant did have an opportunity to speak with Tenant Duty Counsel prior to the hearing. This would give the Tenant a chance to receive advice on the hearing process. I acknowledge that hearings before the LTB may be confusing to the lay person. However, you do not to be proficient in residential tenancy law to know your monthly income. If the Tenant provided incorrect information about his income, he is the author of his own misfortune.
10. I find the Tenant's representative is attempting to relitigate an issue that has already been determined by the last hearing member. This application by the Landlord is not the forum to relitigate already determined issues. If there was an error with the previous decision, the Board has a process address that issue.
11. The Tenant's representative submits that he the Tenant may not have understood the consequences of breaching the previous Board order. While the Tenant is not required to present at the hearing, without his evidence it is impossible for me to make that determination.

12. At the hearing, I was provided no evidence surrounding any circumstances that would support granting relief from eviction. I was not provided with a satisfactory explanation as to why the Tenant was not able to make the arrears payments as required. The only explanation provided was that the Tenant's employment was part time, and he was unable to make the payments.
13. The Tenant's representative submitted documentation regarding additional arrears payments made after the application was filed. There was no reason that additional documentary evidence was not provided to lead me to believe it would be appropriate to grant relief from eviction.
14. The Tenant paid additional arrears payments after the application was filed. That is not determinative of whether relief from eviction should be granted. I must consider all the circumstances to determine whether the Tenant's proposed payment plan is realistic.
15. This is impossible to do when I was provided no evidence surrounding the Tenant's income and expenses. When the Tenant's representative was asked about the Tenant's monthly income, the only evidence led was that the Tenant now has a full-time job. I find the lack of details provided to be an indication the Tenant has no intention to preserve the tenancy, and the Tenant seems to have only entered this process to delay the eviction.
16. For the foregoing reasons, I find it would be unfair to grant relief from eviction under s.83 of the Act.

Arrears Owing

17. The previous application includes a request for an order for the payment of arrears of rent and the order requires the Tenant to make payments by specific due dates. Accordingly, in addition to eviction, the Landlord is entitled to request an order for the payment of arrears owing. The parties agree the rent arrears owing and costs to August 31, 2023, are \$9,184.78. The rent arrears and costs owing to the date of the hearing are \$8,707.02.

Rent Deposit

18. The Landlord collected a rent deposit of \$1,816.55 from the Tenant and this deposit is still being held by the Landlord.
19. Interest on the rent deposit is owing to the Tenant for the period from January 1, 2023, to August 29, 2023. The interest owing the Tenant is \$29.86
20. The amount of the rent deposit and interest on the rent deposit is applied to the amount the Tenant is required to pay.

Daily Compensation

21. The Landlord is entitled to daily compensation from the day after this order is issued to the date the Tenant moves out of the unit at a daily rate of \$59.72. This amount is calculated as follows: \$1,816.54 x 12, divided by 365 days.

It is ordered that:

1. Order LTB-L-054726-22 is cancelled.
2. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before September 9, 2023.
3. If the unit is not vacated on or before September 9, 2023, then starting September 10, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
4. 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 10, 2023.
5. The Tenant shall pay to the Landlord \$6,860.61 This amount represents the rent owing up to August 22, 2023, and the cost of filing the previous application, less the rent deposit and interest the Landlord owes on the rent deposit.
6. The Tenant shall also pay to the Landlord \$59.72 per day for compensation for the use of the unit starting August 23, 2023, to 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 9, 2023, the Tenant will start to owe interest. This will be a simple interest calculated from September 10, 2023, at 6.00% annually on the balance outstanding.

August 29, 2023

Date Issued

Bryan Delorenzi

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 10, 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.