



Order under Section 69 Residential Tenancies Act, 2006

Citation: Squire Apartments Inc. v Burnette, 2023 ONLTB 58333

Date: 2023-08-25

File Number: LTB-L-035520-22

In the matter of: 714, 20 Tremont Drive
St. Catharines ON L2T3B1

Between: Squire Apartments Inc. Landlord

And

Okhan Burnette Tenant

Squire Apartments Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Okhan Burnette (the 'Tenant') because

- The Tenant did not pay the rent that the Tenant owes.
- The Tenant has persistently paid their rent late.

This application was heard by videoconference on June 26, 2023. The Landlord's representative, D. Rootham 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. The Landlord also served the Tenant with a valid Notice to End Tenancy Early for persistently paying their rent late (N8 Notice).
3. As of the hearing date, the Tenant was still in possession of the rental unit.
4. The lawful rent is \$1,541.00. It is due on the 1st day of each month.

5. Based on the Monthly rent, the daily rent/compensation is \$50.66. This amount is calculated as follows: \$1,541.00 x 12, divided by 365 days.
6. The Tenant has paid \$14,011.00 to the Landlord since the application was filed.
7. The parties agree that the rent arrears owing to June 30, 2023 are \$8,242.00.
8. The parties also agree that the Tenant has persistently paid his rent late.
9. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
10. The Landlord collected a rent deposit of \$1,485.00 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.
11. Interest on the rent deposit, in the amount of \$69.80 is owing to the Tenant for the period from February 1, 2021 to June 26, 2023.
12. 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.
13. At the outset of the hearing the Tenant requested to terminate the tenancy as of August 15, 2023. The Landlord did not agree to that date. The Tenant then proceeded to give submissions regarding a payment plan and stated that he would like to stay in the rental unit.
14. I canvassed with the Tenant his regular monthly income and expenses. After going through this exercise, it was clear that the Tenant could not afford to sustain the tenancy as he was in a deficit of \$836.00 per month and that is not taking into account paying the Landlord back any of the arrears. As such, I do not find that this tenancy is viable.
15. Given that the Tenant was prepared to vacate the rental unit as of August 15, 2023 and now that date is passed, no further time shall be given. The Tenant shall also receive some additional time due to the inevitable delay the Landlord shall face with enforcing this order with the Sheriff. This order is also voidable, so if the Tenant has sourced additional funding or pays off the arrears he may remain in the rental unit.
16. Provided the Tenant voids the L1 Application, there will be a requirement for him to pay his lawful monthly rent, in full and on time, for 12 consecutive months beginning October 1, 2023, as there was no contention that he has been persistently late in paying his rent.

It is ordered that:

L1 APPLICATION:

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:**
 - \$11,510.00 if the payment is made on or before August 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$13,051.00 if the payment is made on or before September 5, 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 5, 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 5, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$6,649.37. 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 \$50.66 per day for the use of the unit starting June 27, 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 5, 2023, the Tenant will start to owe interest. This will be simple interest calculated from September 6, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before September 5, 2023, then starting September 6, 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 6, 2023.

L2 APPLICATION:

10. Provided the Tenant voids the L1 Application- Commencing October 1, 2023, the Tenant shall pay their monthly rent in full and on time, on or before the 1st day of each month for a period of 12 consecutive months (October 1, 2023-September 1, 2024).

11. If the Tenant fails to comply with the conditions set out in paragraph 10 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.

August 25, 2023

Date Issued

Curtis Begg

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 6, 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 August 31, 2023

Rent Owing To August 31, 2023	\$25,335.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$14,011.00
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	\$11,510.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before September 5, 2023

Rent Owing To September 30, 2023	\$26,876.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$14,011.00
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	\$13,051.00

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

Rent Owing To Hearing Date	\$22,029.16
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$14,011.00
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	- \$1,485.00
Less the amount of the interest on the last month's rent deposit	- \$69.80

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	\$6,649.37
Plus daily compensation owing for each day of occupation starting June 27, 2023	\$50.66 (per day)