



Order under Section 69 Residential Tenancies Act, 2006

Citation: JEFFS v Kohl, 2023 ONLTB 29115

Date: 2023-08-25

File Number: LTB-L-048121-22

In the matter of: UPPER UNIT, 15 HERZBERG GARDENS NORTH
YORK ON M3J3P5

Between: JEFFS and HIGHGATE PROPERTY Landlord INVESTMENTS
INC.

And

William Kohl, Megan Byrne and Kevin Potter

Tenant

JEFFS and HIGHGATE PROPERTY INVESTMENTS INC. (the 'Landlord') applied for an order to terminate the tenancy and evict William Kohl, Megan Byrne and Kevin Potter (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 27, 2023.

The Landlord, Landlord's legal representative Jeff Shabes, and the Tenants William Kohl(WK), Megan Byrne(MB) and Kevin Potter(KP) 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 \$2,432.10. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$79.96. This amount is calculated as follows: \$2,432.10 x 12, divided by 365 days.
5. The Tenant has paid \$14,025.68 to the Landlord since the application was filed.

6. The rent arrears owing to March 31, 2023 are \$7,910.30.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.

Rent Arrears - Assignment

9. The parties disagreed over the outstanding rent arrears. The Landlord stated that the total arrears, up to March 31, 2023, was \$7,910.30 and that no payments had been made to the Landlord since the application was filed.
10. In response, the Tenants agreed that they had not paid her rent since January 01, 2022 but submitted that the rent arrears are due to one of the Tenants who vacated the unit as of January 01, 2022. The Tenants claim they submitted applications to the Landlord for consent to sublet the rental unit to potential subtenants. However, the Tenant claims that the Landlord arbitrarily or unreasonably withheld consent to the assignment or sublet of the rental unit to another person when he failed to respond to any of their requests.
11. The Landlord conceded that he received about three applications from the Tenant asking for consent to sublet the rental unit to potential subtenants; however, he did not respond to their requests because they did not meet the required standard.
12. Section 97 of the *Residential Tenancies Act, 2006* ("Act") states, in part, as follows:
 - (1) A tenant may sublet a rental unit to another person with the consent of the landlord.
 - (2) A landlord shall not arbitrarily or unreasonably withhold consent to the sublet of a rental unit to a potential subtenant.
13. Based on the evidence and testimonies before me, I find that, as of January 01, 2022, the Landlord arbitrarily or unreasonably withhold consent and this refusal satisfies the requirement of subsection 97(2) of the Act.
14. Pursuant to subsection 95(4) of the Act provides that if a landlord refuses consent to sublet (assuming that is what occurred here), the Tenant may give a landlord notice of termination within 30 days after the date the request is made, effective not less than 30 days later in accordance with subsection 96(2) of the Act.
15. While the Tenants had potential assignees, who they argued were lost due to the Landlord's failure to respond, there is no evidence to shows that the Tenant provided the Landlord with a notice of termination (Form N-9) within 30 days after the request for the Landlord to consent to the assignment of the rental unit.

16. As the Tenants did not comply with the requirements under subsection 95(4), the Tenants shall pay to the Landlord the total rent arrears owing.
17. 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.

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:**
 - \$20,256.80 if the payment is made on or before August 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$22,688.90 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 \$7,823.12. This amount includes rent arrears 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 Tenant shall also pay the Landlord compensation of \$79.96 per day for the use of the unit starting March 28, 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 5.00% 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.

August 25, 2023

Date Issued

Percy Laryea

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	\$34,096.48
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$14,025.68
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	\$20,256.80

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	\$36,528.58
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$14,025.68
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	\$22,688.90

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

Rent Owing To Hearing Date	\$21,662.80
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$14,025.68
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	- \$
Less the amount of the interest on the last month's rent deposit	- \$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 amount owing to the Landlord	\$7,823.12
Plus daily compensation owing for each day of occupation starting March 28, 2023	\$79.96 (per day)