



Order under Section 69 Residential Tenancies Act, 2006

Citation: FRANKWARE INC. v Buntin, 2023 ONLTB 55011

Date: 2023-08-10

File Number: LTB-L-005738-23

In the matter of: B, 165 VICTORIA AVE
BELLEVILLE ON K8N 2B5

Between: FRANKWARE INC. c/o Frank Akujobi Landlord

And

Derrick Buntin Tenant

FRANKWARE INC. (the 'Landlord') applied for an order to terminate the tenancy and evict Derrick Buntin (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on June 7, 2023 at 4:13 p.m.

The Landlord Frank Akujobi and the Tenant Derrick Buntin 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 \$1,000.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$32.88. This amount is calculated as follows: \$1,000.00 x 12, divided by 365 days.
5. The Tenant has made \$4,500.00 in payments since the application was filed.
6. The rent arrears owing to June 30, 2023 are \$1,500.00.
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.

Relief from Eviction

9. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until August 31, 2023 pursuant to subsection 83(1)(b) of the Act.
10. The Tenant alleged that there have been ongoing maintenance problems with the unit and submitted that these circumstances result in mandatory refusal of eviction under subsection 83(3)(a) of the Act. That section states that the Board must deny eviction when "the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement."
11. The events alleged by the Tenant include pests in the unit. The Tenant testified he informed the Landlord and the Landlord was unresponsive until the unit was treated for pests, including laying traps in January 2023.
12. It is undisputed the unit was treated for pests and traps were laid in January 2023. The Tenant claimed it did not fully resolve the pest issue.
13. The Landlord testified that Greenshield exterminators were called and treated the unit for pests on January 7, 2023.
14. Subsection 83(3)(a) of the Act speaks in the present tense, thus I cannot consider past breaches that have been remedied. Although the Tenant claims the problems are ongoing, the evidence before me suggests that the pest matter has been addressed at one point mitigating the severity of the issue. The use of the word "serious" in subsection 83(3)(a) establishes that not all breaches of the Landlord's responsibilities can be considered; only those determined by the Member to be serious will invoke section 83(3) of the Act. Even if all of these pest related issues were ongoing, I am not satisfied based on the Tenant's evidence or description of them that the matters, alone or in the aggregate, constitute a serious breach of any responsibilities of the Landlord under the *Act*.
15. The Tenant testified he is on a fixed income and his primary source of income is his pension. The Tenant further testified he intentionally shortchanged the Landlord because he could not afford his bills at the time, only paying \$900.00 per month, rather than the lawful monthly rent of \$1,000.00 per month. The Tenant has made payments since the application.
16. I find after considering all of the disclosed circumstances, in particular understanding the Tenants' financial circumstances, that it would not be unfair to delay the eviction to August 31, 2023. This will afford the Tenant with additional time to pay the balance of the arrears owing to preserve the tenancy with limited prejudice to the Landlord.

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:**
 - \$3,686.00 if the payment is made on or before August 21, 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 August 31, 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 August 31, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$916.16. 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 \$32.88 per day for the use of the unit starting June 8, 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 August 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from September 1, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before August 31, 2023, then starting September 1, 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 1, 2023.

August 10, 2023
Date Issued

 Greg Witt
 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 February 22, 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	\$3,500.00
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 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	\$3,686.00

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

Rent Owing To Hearing Date	\$730.16
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	- \$0.00
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	\$916.16
Plus daily compensation owing for each day of occupation starting June 8, 2023	\$32.88 (per day)