



Order under Section 69 Residential Tenancies Act, 2006

Citation: 2732437 Ontario Inc. v O'Neill, 2023 ONLTB 51722

Date: 2023-08-02

File Number: LTB-L-060295-22

In the matter of: 1434 KING ST E
CAMBRIDGE ON N3H3R4

Between: 2732437 Ontario Inc. Landlord

And

Gerald Patrick O'Neill Tenant

2732437 Ontario Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Gerald Patrick O'Neill (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (L1 Application).

The Landlord also applied for an order to terminate the tenancy and evict the Tenant because the Landlord requires possession of the rental unit in order to convert it to a non-residential use.

The Landlord also claimed compensation for each date the Tenant remained in the unit after the termination date.

This application was heard by videoconference on May 31, 2023.

Only the Landlord's owner, Meetu Mahendra ('MM'), and the Landlord's legal representative, Jane Dean ('JD'), attended the hearing.

As of 11:06 a.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

L1 Application

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 \$1,715.34. It is due on the 15th day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$56.39. This amount is calculated as follows: $\$1,715.34 \times 12$, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to June 14, 2023 are \$15,438.06.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$1,695.00 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. Interest on the rent deposit, in the amount of \$57.61 is owing to the Tenant for the period from July 15, 2020 to May 31, 2023.

L2 Application

9. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy or the claim for compensation in the L2 Application. Therefore, the L2 Application is dismissed.
10. The Tenant was in possession of the rental unit on the date the application was filed.
11. On October 5, 2022, the Landlord gave the Tenant an N13 notice of termination with the termination date of February 14, 2023. The Landlord claims vacant possession of the rental unit is required for conversion to a non-residential use.
12. The residential complex contains fewer than five residential units. Therefore, the Landlord was required to compensate the Tenant in an amount equal to one month rent by the termination date or offer the Tenant another rental unit acceptable to the Tenant.
13. The Landlord paid the Tenant the required compensation on December 15, 2022 by waiving the rent due for that month. Since the L2 application is dismissed, rent for December 2022 is owing and is included in the order for the L1 Application..
14. MM said she is a dentist, and intends to convert the rental unit to a dental office to accommodate her expanding practice. She said the rental unit is a standalone building with only one rental unit, which is occupied by the Tenant. She said there is also a basement, but the Tenant only occupies the main and upper floor.

15. MM's intention is to convert the main and upper floor to a dental office, and live in the basement underneath.
16. The current zoning permits this commercial use.
17. MM has purchased a substantial amount of supplies and equipment for the dental office planned for the rental unit.
18. MM's evidence was that a building permit is required to carry out the work to convert the rental unit to a dental office. She did not believe vacant possession of the rental unit is required to obtain the permit. The Landlord has not obtained the necessary permit.
19. The N13 notice was given under section 50 of the Act. Under subsection 73(1)(b) of the Act, the Board **shall not** make an order terminating a tenancy and evicting a tenant on an application based on a notice under section 50 unless the landlord has obtained all necessary permits or other authority required to carry out the activity the notice of termination was based on, **or** has taken all reasonable steps to obtain all necessary permits or other authority required to carry out the activity, **if it is not possible to obtain the permits or other authority until the rental unit is vacant.**
20. Because it was possible to obtain the permit before the unit is vacant, I cannot grant the application because the Landlord has not obtained the necessary permit. The L2 application must therefore be dismissed.

Relief from Eviction

21. JD said that the Landlord has reached out to the Tenant to invite him to make a payment plan, but there was no effort by the Tenant to contact the Landlord or JD. She was not aware of any other circumstances of the Tenant that should be considered with respect to whether eviction should be delayed or denied.
22. 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 L2 Application is dismissed.
2. The tenancy between the Landlord and the Tenant is terminated based on the L1 Application unless the Tenant voids this order.
3. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**

- **\$19,054.74** if the payment is made on or before August 13, 2023. See Schedule 1 for the calculation of the amount owing.
- 4. 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 13, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
- 5. **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 13, 2023**
- 6. If the Tenant does not void the order, the Tenant shall pay to the Landlord **\$13,114.74**. 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.
- 7. The Tenant shall also pay the Landlord compensation of \$56.39 per day for the use of the unit starting June 1, 2023 until the date the Tenant moves out of the unit.
- 8. If the Tenant does not pay the Landlord the full amount owing on or before August 13, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 14, 2023 at 6.00% annually on the balance outstanding.
- 9. If the unit is not vacated on or before August 13, 2023, then starting August 14, 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 August 14, 2023.

2023 ONLTB 51722 (CanLI)

August 2, 2023 Date Issued

Mark Melchers
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 14, 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 13, 2023

Rent Owing To August 14, 2023	\$18,868.74
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	\$19,054.74

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

Rent Owing To Hearing Date	\$14,681.35
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	- \$1,695.00
Less the amount of the interest on the last month's rent deposit	- \$57.61
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	\$13,114.74
Plus daily compensation owing for each day of occupation starting June 1, 2023	\$56.39 (per day)