



Order under Section 69 Residential Tenancies Act, 2006

Citation: 940412 ONTARIO LTD v Caceres, 2023 ONLTB 51185

Date: 2023-07-26

File Number: LTB-L-021486-23

In the matter of: 1008, 21 MAYNARD AVE
TORONTO ON M6K2Z8

Between: 940412 ONTARIO LTD Landlord

And

Carlos Felipe Jesus Caceres Tenant

940412 ONTARIO LTD (the 'Landlord') applied for an order to terminate the tenancy and evict Carlos Felipe Jesus Caceres (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on July 6, 2023.

The Landlord's Legal Representative Elaine Page and the Tenant's Legal Representative Alexander Coomes and the Tenant attended the hearing.

Preliminary Issue:

1. Mr. Coomes questioned the representative who signed the documents on behalf of the Landlord. He later agreed it was a MOOT issue. The matter proceeded to a 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 \$1,537.50. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$50.55. This amount is calculated as follows: \$1,537.50 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The Landlord collected a rent deposit of \$1,500.00 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.

The Evidence

7. The Landlord testified that the Tenant owes \$9,075.00 in rent arrears owing to July 31, 2023.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. Mr. Coomes asked no questions about the evidence presented by the Landlord.
10. The Tenant Mr. Caceres testified. He stated he was unable to pay rent, as he was making good money until his boss passed away. His pay was cut after his boss passed away and he had to get a 2nd job to make up for the difference in pay. He stated, "I began hitting the bottle" and admitted things began to go downhill.
11. Mr. Caceres testified he has problems with his knees and when traveling by subway, he needs to walk step by step. It makes it difficult when he takes public transit for employment, as he requires more time given his knee issues to get to his destination. He did mention under cross examination that his doctor was still determining whether he needs knee replacement surgery. He indicated that he went to CAMH and EPIC for financial assistances.
12. Ms. Page cross examined the Tenant on the evidence presented. When the Tenant was questioned if he had anything filed with CAMH, the Tenant agreed nothing was filed, but was meeting/seeing someone from CAMH on July 12, 2023, to start the process.
13. The Tenant stated he makes a total of \$2,500 per month. His expenses are under \$1,000.00 for cellphone, loan, presto card, and groceries. His rent is \$1,537.50. He admitted because of his drinking problem, he fell behind in paying rent but is now taking steps with CAMH to correct the arrears. When questioned if the Tenant asked friends or family for help with assistance to pay the arrears, he stated he did not ask for help.
14. Mr. Coomes questioned the Tenant, about how much money would he be earning once he able to work an additional job, he stated he will be making \$4,000.00 per month.
15. The Tenants next witness was Justina Opoku-Ware. She testified she is an eviction support worker, assists with Tenants who are at risk of losing housing, and will help move forward in sustaining their tenancy. She can provide Tenants with supplement monies, CAMH credit counselling, and she can assign support to Tenants, as needed.
16. Ms. Page cross examined the Ms. Opoku-Ware on the evidence presented. Ms. Page questioned about how the rent bank can assist in paying the outstanding arrears. Ms. Opoku-Ware stated the rent bank will assist in a lump sum payment which should amount to around \$4,000.00. Epic will assist with additional supplement money after December 2023.
17. I asked both parties on submissions on eviction. The Landlord requested the Board to consider a delayed eviction until July 31, 2023. The Tenant requested the Board consider a repayment plan for 6 months, as given support is coming from the rent bank, epic, and assistance from friends and family. If the Board does not grant the repayment plan, the Tenant requested delaying the eviction for 60 days.

18. When I review the submissions made by both parties. The Tenant did not provide any evidence of how much money they can pay per month to avoid eviction. I heard no evidence from the Tenant whether the Board should consider a section 78, if they breach the payment plan. The only evidence I was provided was relief maybe be coming. While the Tenant provided some evidence about their current financial situation, the Tenant did not have to wait for the hearing to express that they wish to negotiate a repayment plan. The Tenant provided no evidence how that monthly rent would be paid going forward. I will also note that the Tenant has not made any payments towards the arrears since the filing of the application. In other words, the Tenant stated they have a meeting with CAMH on July 12, 2023, however the Tenant does not have a concrete repayment plan. Further, the Tenant did not provide any evidence or submissions that they disagreed with the rent arrears and has made no good faith effort to pay the arrears.
19. This is prejudicial to the Landlord. The Tenants proposed repayment plan was not a concrete plan nor given their financial circumstances could the Tenant sustain to live in the rental unit any longer.
20. 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.

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:**
 - \$9,261.00 if the payment is made on or before July 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$10,798.50 if the payment is made on or before August 31, 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 \$6,526.80. 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 \$50.55 per day for the use of the unit starting July 7, 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 6, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 7, 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.

July 26, 2023
Date Issued

Anthony Bruno
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 1, 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 July 31, 2023

Rent Owing To July 31, 2023	\$9,075.00
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	\$9,261.00

B. 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	\$10,612.50
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	\$10,798.50

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

Rent Owing To Hearing Date	\$7,840.80
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	- \$1,500.00
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	\$6,526.80
Plus daily compensation owing for each day of occupation starting July 7, 2023	\$50.55 (per day)

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