



Order under Section 69 Residential Tenancies Act, 2006

Citation: Elbidaiwi v Powell, 2023 ONLTB 51903

Date: 2023-07-25

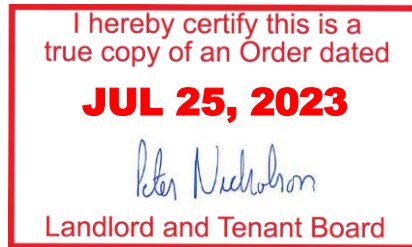
File Number: LTB-L-018414-23

In the matter of: 1014 MELVIN AVE
OAKVILLE ON L6J2V9

Between: Tawfik Elbudaiwi
Julie-Anne Elbudaiwi

And

Andre Powell
Chermaine Powell



Landlord

Tenant

2023 ONLTB 51903 (CanLII)

Tawfik Elbidaiwi and Julie-anne Elbidaiwi (the 'Landlord') applied for an order to terminate the tenancy and evict Andre Powell and Chermaine Powell (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on June 21, 2023.

The Landlords, the Landlords' representative M. Mont and the Tenant Andre Powell attended the hearing. The Tenant Andre Powell acknowledged having authority to speak on behalf of the Tenant Chermaine Powell.

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 \$2,700.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$88.77. This amount is calculated as follows: \$2,700.00 x 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 30, 2023 are \$27,000.00. This amount was not disputed by the Tenant.
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 \$2,700.00 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.
9. Interest on the rent deposit, in the amount of \$69.94 is owing to the Tenant for the period from December 1, 2021 to June 21, 2023.

Section 82

10. Section 82 of the Act permits the Tenant to raise any issue that could be the subject of an application provided certain notice requirements are met.
11. The Tenant relies upon a letter, with accompanying pictures, served on the Landlord and filed with the Board on June 15, 2023. In particular, the Tenant alleges the Landlord parked a truck on the driveway, trespassed on the property, and stored items in the storage room in the basement and in half of the garage. The Tenant also alleges the Landlord gave permission to workers at the neighbouring property to remove a fence and cross the Tenant's backyard multiple times to store and deliver materials next door.
12. The Landlord denies any interference and states the Tenant was aware the Landlord retained some storage in the rental unit and that the Tenant was made aware that such storage areas did not form part of the space being rented to the Tenant. The Landlord further states that throughout the tenancy, the Tenant never requested items be removed from the property, and that proper 24-hour notice was given to the Tenant when accessing the property. The Tenant provided few particulars as to the dates/ frequency the workers crossed the Tenant's property, the Landlord's involvement, and/or the resulting impact upon the Tenant. While not a requirement to prove the Tenant's allegations, the Tenant also did not produce any email correspondence to the Landlord in support of the alleged interference or disagreement about storage. In the circumstances, I find there is insufficient evidence presented to determine that a breach has been established. The Tenant's claims are therefore dismissed.

Section 83

13. Section 83 requires that I consider all the circumstances, including the Tenant's and the Landlord's situations to determine if it would be appropriate to grant section 83 relief from eviction.
14. The Landlord advised that the Landlord has tried to reach out to the Tenant for a repayment plan, without success. The Landlord noted the arrears are significant and the Tenant's non-payment over several months has been very difficult financially for the Landlord. The Tenant noted his employment was impacted due to a 2-3 month strike and that during this time, his savings were applied towards other bills. At the hearing, the Tenant did not propose a repayment plan, but sought additional time to find alternative accommodations.
15. I have considered all of the disclosed circumstances in accordance with subsection 83 of the *Residential Tenancies Act, 2006* (RTA), including 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.

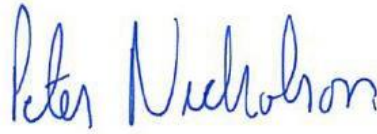
It is ordered that:

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:**
 - \$29,886.00 if the payment is made on or before July 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$32,586.00 if the payment is made on or before August 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 August 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 August 5, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$23,580.23. 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 \$88.77 per day for the use of the unit starting June 22, 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 5, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 6, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before August 5, 2023, then starting August 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 August 6, 2023.



July 25, 2023
Date Issued

Peter Nicholson
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 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 July 31, 2023

Rent Owing To July 31, 2023	\$29,700.00
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	\$29,886.00

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

Rent Owing To August 31, 2023	\$32,400.00
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	\$32,586.00

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

Rent Owing To Hearing Date	\$26,164.17
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	- \$2,700.00
Less the amount of the interest on the last month's rent deposit	- \$69.94
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	\$23,580.23
Plus daily compensation owing for each day of occupation starting June 22, 2023	\$88.77 (per day)