



Order under Section 69 and 77 Residential Tenancies Act, 2006

Citation: Deneau v Henin, 2023 ONLTB 51212

Date: 2023-07-25

File Number: LTB-L-034873-23

In the matter of: Lower, 178 HANNA ST E
WINDSOR ON N8X2N2

Between: Russell Deneau Landlord

And

Michelle Henin Tenant

Russell Deneau (the 'Landlord') applied for an order to terminate the tenancy and evict Michelle Henin (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes. (the L1 Application)

The Landlord also applied for an order to terminate the tenancy and evict the Tenant because the Tenant entered into an agreement to terminate the tenancy. (the L3 Application)

These applications were heard by videoconference on July 11, 2023.

The Landlord, the Landlord's Legal Representative Justin Timms-Fryer and the Tenant attended the hearing. Tenant Duty Counsel for Windsor had attended the hearing room earlier in the afternoon but as the Tenant was not present, they left the hearing. The Tenant did not attend the hearing until 1:47 p.m.

Determinations:

Adjournment request:

1. The Tenant sought an adjournment of this matter as she wished to obtain further legal advice. The Tenant submits that she reached out to legal aid shortly after the first time this matter was before the Board but they were not available to assist her today and she therefore sought an adjournment so she could have someone assist her today.
2. The Landlord's Legal Representative opposed the adjournment request and submits that the Tenant has had ample time to obtain legal advice and that was one of the reasons why the first adjournment was granted on May 30, 2023. The Landlord's Legal Representative also submits that he and the Landlord were not contacted by anyone from Legal Aid or elsewhere on behalf of the Tenant stating they were retained and not able to attend this hearing.
3. Having considered the reason for the adjournment request, the position of the parties, the issues in the applications, the history of the proceeding including the previous adjournment

request by the Tenant, which was granted peremptory on the Tenant, and any prejudice that may result from granting or denying the request, the adjournment was denied.

L1 Application:

4. 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.
5. As of the hearing date, the Tenant was still in possession of the rental unit.
6. The lawful rent is \$1,850.00. It is due on the 1st day of each month.
7. Based on the Monthly rent, the daily rent/compensation is \$60.82. This amount is calculated as follows: \$1,850.00 x 12, divided by 365 days.
8. The Tenant has not made any payments since the application was filed.
9. The rent arrears owing to July 31, 2023 are \$13,300.00. The Tenant does not dispute the amount of arrears owing.
10. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
11. The Landlord collected a rent deposit of \$1,850.00 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.
12. Interest on the rent deposit, in the amount of \$32.06 is owing to the Tenant for the period from November 1, 2022 to July 11, 2023.

L3 Application:

13. The Landlord and Tenant entered into an agreement to terminate the tenancy as of April 30, 2023 and the Tenant did not move out of the rental unit by the termination date set out in the agreement.
14. The Landlord filed an L3 application before the Board and made reference to the copy of the signed N11 "Agreement to End the Tenancy" signed March 23, 2023 that was appended to the L3 application.
15. The Tenant acknowledges that she signed the N11 Agreement as described above but could not move out of the rental unit by April 30, 2023 as she was hospitalized for a month. The Tenant submits that but for her hospitalization, she would have been out of the rental unit. The Tenant stated that she did have somewhere else to move into for May 1, 2023 but because she was unable to move, that unit was given to someone else.
16. The Tenant requests additional time to vacate the rental unit as the housing market is now quite hard to find available units.
17. The Landlord submits that the Tenant was not hospitalized for an entire month and there was no proof tendered by the Tenant to collaborate her submissions. The Landlord's

Legal Representative states that the Tenant has not been paying rent for a number of months, is now not working and is seeking an immediate eviction.

18. Based on the evidence and submissions before me, including that the Tenant does not deny signing the N11 agreement but is requesting additional time to move, I find that the Landlord and the Tenant duly signed an N11 Agreement, effectively terminating the tenancy.

Relief from Eviction:

19. In respect of the L1 and L3 applications, the Tenant submits that upon signing the N11 agreement, she contacted ODSP to cancel rent payments to the Landlord but then fell ill and it didn't occur to her to do anything about the rent payments. The Tenant stopped working in March, 2023, has two children, ages 15 and 20 years old, and states has nowhere to go to. The Tenant has made no efforts to pay any rent to the Landlord for a number of months.
20. The Landlord submits that he is retired and cannot afford the rental unit as he has now depleted his savings due to the non-payment of rent by the Tenant. The Landlord's Legal Representative requests that due to the quantum of arrears, the Tenant's inability to pay any of the arrears and the Tenant's broken promises that eviction be immediate.
21. Given all of the evidence and submissions before me, I accept that the Tenant has one child and a young adult living with her however, she has made little efforts to move to date and has not paid any rent to the Landlord for a number of months. Given the quantum of arrears here, I am not prepared to grant a delay of more than 30 days from the date of this order. As a result, the eviction will be delayed to August 25, 2023.
22. 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 25, 2023 pursuant to subsection 83(1)(b) of the Act.
23. This order contains all of the reasons within it and no further reasons will be issued.

It is ordered that:

L1 Application:

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:**
 - \$13,486.00 if the payment is made on or before July 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$15,336.00 if the payment is made on or before August 25, 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 25, 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 25, 2023.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$10,422.96. 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 \$60.82 per day for the use of the unit starting July 12, 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. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

L3 Application:

9. Even if the Tenant is successful in voiding the L1 portions of this order, the tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before August 25, 2023.
10. If the unit is not vacated on or before August 25, 2023, then starting August 26, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
11. 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 26, 2023.

July 25, 2023
Date Issued

 Heather Chapple
 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 26, 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	\$13,300.00
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	\$13,486.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before August 25, 2023

Rent Owing To August 31, 2023	\$15,150.00
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	\$15,336.00

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

Rent Owing To Hearing Date	\$12,119.02
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	- \$1,850.00
Less the amount of the interest on the last month's rent deposit	- \$32.06
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	\$10,422.96
Plus daily compensation owing for each day of occupation starting July 12, 2023	\$60.82 (per day)

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