



Order under Section 69 Residential Tenancies Act, 2006

Citation: NOVI PROPERTIES v Harriott, 2023 ONLTB 51006

Date: 2023-07-24

File Number: LTB-L-040264-22

In the matter of: 407, 18 REID DR
MISSISSAUGA ON L5M2A9

Between: NOVI PROPERTIES Landlord

And

Michael Harriott Tenant

NOVI PROPERTIES (the 'Landlord') applied for an order to terminate the tenancy and evict Michael Harriott (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlord also claimed charges related to NSF cheques.

This application was heard by videoconference on July 13, 2023.

The Landlord's agent Kristina Tumanov, the Tenant, and the Tenant's son Kirk Harriott attended the hearing.

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 \$1,930.38. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$63.46. This amount is calculated as follows: \$1,930.38 x 12, divided by 365 days.
5. The Tenant has paid \$18,726.32 to the Landlord since the application was filed.
6. The rent arrears owing to July 31, 2023 are \$8,852.82.
7. The Landlord is entitled to \$60.00 to reimburse the Landlord for administration charges and \$75.00 for bank fees the Landlord incurred as a result of 3 cheque given by or on behalf of the Tenant which was returned NSF.

8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$1,883.31 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.
10. Interest on the rent deposit, in the amount of \$25.29 is owing to the Tenant for the period from January 1, 2022 to July 13, 2023.
11. The Tenant did not dispute the arrears and submitted that he had difficulties paying rent as he could not work full-time due to a kidney failure diagnosis in 2009 and lymphopenia cancer in April 2023. The Tenant explained that he works as an electrician on a contractual basis due to the ongoing dialysis treatment required for kidney treatment. The Tenant testified that he is in the process of securing a full-time industrial electrician job with Pepsi, which would allow him to pay off the arrears accordingly.

L2 Application - N8 Notice of Termination

12. The Landlord's L2 application is based on an N8 notice served to the Tenant on July 12, 2022 with a termination date of September 15, 2022.
13. The N8 notice alleges that the Tenant has failed to pay the monthly rent in full and on time each month from January 01, 2021 to July 01, 2022. The Tenant does not dispute the contents of the N8 notice.
14. The parties agreed that since serving the N8 notice, the Tenant had failed to pay their monthly rent on time from October 01, 2022 to July 01, 2023.

Relief from eviction:

15. For the L1 application, the Landlord is a standard eviction order as she expressed doubt about the Tenant's ability to pay rent arrears because it is significant, and the parties have "been down this road before." The Landlord rejected the Tenant's payment plan because it would take longer to pay and would put the Landlord into further financial distress.
16. The Tenant conceded that he had been in rent arrears before but paid it off. The Tenant is seeking a \$1,000.00 monthly payment plan.
17. 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 not be unfair to postpone the eviction until September 30, 2023 pursuant to subsection 83(1)(b) of the Act to give the Tenant sufficient time to pay the arrears and continue the tenancy. For the L2 application, I find that it would not be unfair to grant relief from eviction subject to the condition(s) set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.
18. Based on the evidence before the Board, a 12-month payment plan would be unfair to the Landlord. However, given the Tenant's medical condition and extenuating circumstances,

extending the eviction date to allow the Tenant some additional time to pay the rent arrears owing and preserve the Tenancy is appropriate.

It is ordered that:

The Application for Non-payment of Rent:

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:**
 - \$9,173.82 if the payment is made on or before July 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$11,104.20 if the payment is made on or before August 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$13,034.58 if the payment is made on or before September 30, 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 September 30, 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 September 30, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$6,159.82. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application and unpaid NSF charges. 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 \$63.46 per day for the use of the unit starting July 14, 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 4, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 5, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before September 30, 2023, then starting October 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 October 1, 2023.

The Application for Persistent Late Payment of Rent:

10. If the Tenant voids the part of this order relating to non-payment of rent, above, the Tenant shall:
 - a) Pay the lawful monthly rent for August 2023 on or before August 15, 2023.
 - b) Pay lawful monthly rent as it comes due in full and no later than the first day of each month commencing September 2023 through to August 2024.
11. If the Tenant fails to make any one of the payments in accordance with paragraph 10 of this order, the Landlord may, without notice to the Tenant and within 30 days of the breach, apply to the Board pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant.

July 24, 2023
Date Issued

Percy Laryea
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 April 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	\$27,579.14
Application Filing Fee	\$186.00
NSF Charges	\$135.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$18,726.32
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	\$9,173.82

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	\$29,509.52
Application Filing Fee	\$186.00
NSF Charges	\$135.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$18,726.32
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	\$11,104.20

C. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before September 30, 2023

Rent Owing To September 30, 2023	\$31,439.90
Application Filing Fee	\$186.00
NSF Charges	\$135.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$18,726.32
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	\$13,034.58
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D. Amount the Tenant must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$26,473.74
Application Filing Fee	\$186.00
NSF Charges	\$135.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$18,726.32
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	- \$1,883.31
Less the amount of the interest on the last month's rent deposit	- \$25.29
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	\$6,159.82
Plus daily compensation owing for each day of occupation starting July 14, 2023	\$63.46 (per day)