



Order under Section 69 Residential Tenancies Act, 2006

Citation: Vyas v Nolan, 2023 ONLTB 50758

Date: 2023-07-19

File Number: LTB-L-081536-22

In the matter of: 714 Twist Way
Stittsville, ON K2V 0M8

Between: Bimal Hargovind Vyas Landlords
Neha Bimal Vyas

And

Thomas Nolan Tenant

Bimal Hargovind Vyas and Neha Bimal Vyas (the 'Landlord') applied for an order to terminate the tenancy and evict Thomas Nolan (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

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

The Landlord's Legal Representative Alzamel Ahmad and the Tenant attended the hearing. The Tenant met with Tenant Duty Counsel prior to the hearing.

Determinations:

Adjournment Request

1. Prior to the start of the hearing, the Tenant requested an adjournment as he had received the Notice of Hearing on May 29, 2023 and submits that he did not receive any notice from the Board despite the Board's records stating that the Notice of Hearing was mailed to the Tenant on April 24, 2023.
2. The Tenant submitted that despite 8 days notice of the hearing, the Tenant was unable to organize and present his case.
3. The Landlord's Legal Representative submitted that the N4 notice of termination had been served on the Tenant in December of 2022, as well, demand letters were sent to the Tenant in December and January.
4. On the basis of the evidence provided, I was satisfied that the Tenant had been aware of the application since at least December and failed to prepare his case despite knowing for some period that a hearing could take place. On that basis, the Tenant's request for an adjournment was denied.

Landlords' Evidence

5. The Landlords 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.
6. As of the hearing date, the Tenant was still in possession of the rental unit.
7. The lawful rent is \$2,095.00. It is due on the 1st day of each month.
8. Based on the Monthly rent, the daily rent/compensation is \$68.88. This amount is calculated as follows: \$2,095.00 x 12, divided by 365 days.
9. The Tenant has not made any payments since the application was filed.
10. The rent arrears owing to June 30, 2023 are \$25,140.00.
11. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. The Landlords collected a rent deposit of \$2,095.00 from the Tenant and this deposit is still being held by the Landlords. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
13. Interest on the rent deposit, in the amount of \$55.56 is owing to the Tenant for the period from November 7, 2020 to June 6, 2023.

Section 83 Considerations

14. The Tenant acknowledged the arrears and testified about various issues he has had throughout the tenancy since the current Landlords took over the property including the Landlords inquiring about family moving into the unit, being denied a roommate and pressure to vacate the unit.
15. The Tenant also testified that he suffers from epilepsy and that he has not been able to find any units that are close to where he works. He wishes to stay in the unit and proposed a payment plan whereby the Tenant would pay the regular rent in full and on time and would pay an additional \$1,300.00 per month towards the arrears.
16. The Tenant in cross-examination would not disclose his salary and would not disclose his monthly income. Further, the Tenant admitted that he had not made a payment to the Landlord since July of 2022.
17. Having considered the evidence of all parties, I am not satisfied that the Tenant's proposed payment plan is reasonable or viable. The Tenant has not paid any rent in nearly a year despite having been employed sporadically during that time period. Further, I am unable to assess whether the Tenant's payment plan would be viable as he did not disclose his monthly income.
18. That said, the Tenant does have epilepsy and had faced some issues with the Landlords with respect to the tenancy. The Tenant will be given until the end of August to either void the order or to find a new unit.

19. 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 Landlords 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 Landlords:**
 - \$27,421.00 if the payment is made on or before July 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$29,516.00 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 Landlords \$21,493.72. 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 Landlords owe 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 Landlords compensation of \$68.88 per day for the use of the unit starting June 7, 2023 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlords the full amount owing on or before July 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 31, 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 Landlords 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 19, 2023
Date Issued

Jagger Benham
 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.

2023 ONL TB 50758 (CanLII)

**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	\$27,235.00
Application Filing Fee	\$186.00
Total the Tenant must pay to continue the tenancy	\$27,421.00

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	\$29,330.00
Application Filing Fee	\$186.00
Total the Tenant must pay to continue the tenancy	\$29,516.00

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

Rent Owing To Hearing Date	\$23,458.28
Application Filing Fee	\$186.00
Less the amount of the last month's rent deposit	- \$2,095.00
Less the amount of the interest on the last month's rent deposit	- \$55.56
Total amount owing to the Landlords	\$21,493.72
Plus daily compensation owing for each day of occupation starting June 7, 2023	\$68.88 (per day)