



Order under Section 69 Residential Tenancies Act, 2006

Citation: Embee Properties Limited v Silva, 2023 ONLTB 50753

Date: 2023-07-19

File Number: LTB-L-019406-23

In the matter of: 104, 435 GLEN PARK AVE
NORTH YORK ON M6B2E8

Between: Embee Properties Limited Landlord

And

Herminio Silva Tenants
Stephanie DeOliveira

Embee Properties Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Herminio Silva and Stephanie Deoliveira (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

The Landlord also claimed charges related to NSF cheques.

This application was heard by videoconference on July 4, 2023.

The Landlord's Representative, Francine Baker-Sigal, and the Tenants' Agent (daughter of first-named Tenant) Talita Silva, attended the hearing.

Determinations:

1. The Landlord served the Tenants 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 Tenants was still in possession of the rental unit.
3. The lawful rent is \$921.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$30.28. This amount is calculated as follows: \$921.00 x 12, divided by 365 days.
5. The Tenants have not made any payments since the application was filed.
6. The rent arrears owing to July 31, 2023, are \$7,468.00.
7. The Landlord is entitled to \$60.00 to reimburse the Landlord for administration charges and \$90.00 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. At the hearing, I asked the Landlord for evidence of the bank charges of \$30.00 for each NSF cheque, however the Landlord was unable to provide this evidence. I am not satisfied that the charge of \$30.00 for an NSF cheque are valid, therefore the Landlord's claim for the bank fees is denied, however the administrative fees will be granted.
9. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
10. The Landlord collected a rent deposit of \$899.00 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.
11. Interest on the rent deposit, in the amount of \$22.06 is owing to the Tenant for the period from January 1, 2020, to July 4, 2023.

Relief From Eviction- Testimony

12. The Tenant's Agent, on the first-named Tenant's behalf, stated that the Tenant was unable to pay rent or communicate with the Landlord because he was out of the country for a period of time to attend to a family emergency.
13. The Tenant's Agent stated that the Tenant has returned to Toronto and is working again. The Tenant's Agent stated that the Tenant is able to make payments towards arrears and would be willing to pay rent back up to \$2,000.00/month until the arrears are fully paid, and the Tenant's account is brought to a \$0 balance.
14. When I asked the Tenant's Agent for the Tenant's financial information, the Tenant's Agent was not able to give me any details, however the Tenant is employed fulltime by a contractor whose current job is to construct subway tunnels in Toronto. The Tenant also occasionally works on the side with other employers for extra money.
15. The Landlord was opposed to the payment plan offer and reiterated their stance that they are looking for an eviction order. When asked how a payment plan such as the one proposed by the Tenant would cause any undue hardship, the Landlord admitted that the payment plan would not cause an undue hardship, however they felt that the payment plan proposed was unlikely to succeed, based on the fact that the Tenant has often gone into arrears, and has not made any payments to the Landlord since the N4 notice was served to the Tenant. The Landlord also addressed the fact that the Tenant has not responded to any attempts at communication to make payment arrangements.
16. The Tenant's Agent submitted that the Tenant does not speak any English, and there may be a language barrier regarding communication.
17. When asked how much time the Tenant would require to vacate the unit if an order for eviction was made, the Tenant's Agent stated she was not sure, and said it would be extremely difficult for the Tenant to find a new place to live. The Tenant has no family in the city, and due to the Tenant's inability to speak English, he would have a very difficult time finding a new place to live.

Relief From Eviction- Analysis

18. Section 83(2) of the *Residential Tenancies Act, 2006*, (the 'Act') states:

(2) If a hearing is held, the Board shall not grant the application unless it has reviewed the circumstances and considered whether or not it should exercise its powers under subsection (1).

19. Section 83(1) of the Act states:

83 (1) Upon an application for an order evicting a tenant, the Board may, despite any other provision of this Act or the tenancy agreement,

(a) refuse to grant the application unless satisfied, having regard to all the circumstances, that it would be unfair to refuse; or

(b) order that the enforcement of the eviction order be postponed for a period of time.

20. The Act is remedial legislation and the courts have determined that evicting a tenant is a remedy of last resort. In the cases of *Sutherland v. Lamontagne*, [2008] O.J. No. 5763 (Div. Ct.) and *Paderewski Society v. Ficyk*, [1998], the Divisional Court stated, "to put somebody out of their home must, in my view, call for clear and compelling circumstances that it's no longer possible for the arrangement to continue."

21. The termination of a tenancy is a remedy of last resort and relief should be granted where the tenancy can be saved without overly prejudicing a landlord's interests.

22. Based on the evidence before me, I am not satisfied that the Landlord would suffer an undue hardship if I were to make a conditional order in this matter. I find that despite the fact that that the Tenant was unable to produce evidence of income, I find that by both working a full-time and part-time job at the same time, the Tenant has the ability to abide by a payment plan.

23. Pursuant to section 204 of the Act, the Board has the power to order any decision that it deems fair in the circumstances. I find that in this case, it would be fair to grant the payment plan proposed by the Tenant and allow the Tenant to pay \$2,000.00/month for arrears for a period of 3 months on the 25th of each month starting August 25, 2023, and with the remaining \$1,774.00 being paid to the Landlord on or before November 25, 2023. For the duration of the payment plan, new rent would be due on time and in full.

24. I have considered all of the disclosed circumstances in accordance with section 83(2) of the Act and find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to sections 83(1)(a) and 204(1) of the Act.

It is ordered that:

1. The Tenants shall pay to the Landlord \$7,774.00 for arrears of rent up to July 31, 2023, and costs.
2. The Tenants shall pay to the Landlord the amount set out in paragraph 1 in accordance with the following schedule:

- a) \$2,000.00 on or before August 25, 2023,
 - b) \$2,000.00 on or before September 25, 2023,
 - c) \$2,000.00 on or before October 25, 2023,
 - d) \$1,774.00 on or before November 25, 2023,
3. The Tenants shall also pay to the Landlord new rent on time and in full as it comes due and owing for the period August 1, 2023, to November 1, 2023, or until the arrears are paid in full, whichever date is earliest.
 4. If the Tenants fail to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenants to the Landlord pursuant to paragraph 1 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenants, apply to the LTB within 30 days of the Tenants' breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenants and requiring that the Tenants pay any new arrears, NSF fees and related charges that became owing after July 31, 2023.

July 19, 2023
Date Issued

Robert Brown
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.