



Order under Section 69 Residential Tenancies Act, 2006

Citation: WBH Queens Ltd. v Seaton, 2023 ONLTB 43796

Date: 2023-07-19

File Number: LTB-L-063894-22

In the matter of: 21, 187 QUEEN ST
SARNIA ON N7T2R8

Between: WBH Queens Ltd. Landlord

And

Deborah Seaton Tenant

WBH Queens Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Deborah Seaton (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on June 7, 2023.

The Landlord, Landlord's representative David (berel) Ciobotaru(LLR), the Tenant, and the Tenant's representative Melissa Bradley(TTR) attended the hearing.

Preliminary Issue – validity of the N4 Notice:

1. At the hearing the Tenant raised a preliminary issue arguing that the Notice of Termination (N4) this Application is based on is invalid.
2. The N4 was served on the Tenant on October 13, 2022. It has a termination date of March 19, 2021 and claims the total amount of rent owing of \$1,170.60. The N4 has the following chart on page 2 to show how the Landlord calculated arrears of rent owing:

Tenant's Evidence:

3. The Tenant disputes the ledger presented, specifically the N4. TTR claims the ledger incorrectly stated that \$573.00 was the rent paid from September 01, 2022, to September 30, 2022, instead of \$842.00. Further, the N4 notice incorrectly states that the Tenant did

not pay rent from October 01, 2022, to October 31, 2022, instead of \$842.00. TTR claims that the Tenant is at a loss as to what the Tenant owes in rent arrears since the N4 notice is incorrect.

Landlord's Evidence:

4. LLR submits that the total amount of rent arrears claimed in the N4 was correct. His testimony was supported by a detailed ledger and letters about rent arrears and payment plans given to the Tenant. These documents, filed by the Landlord with the Board, are marked as LL Exhibit 1. The ledgers show the history of payments made by the Tenant from November 1, 2022, to June 01, 2023. LLR submitted that payments received from the Tenant were always applied to the corresponding month that was owing at the time of the payment in accordance with generally accepted accounting principles. LLR submitted that all payments made by the Tenant before November 01, 2022, were fully reflected in the N4 notice rent arrears and the Landlord's "L1/L9 Application – Information Update" document.
5. LLR submitted that the total amount owing as of the hearing date was \$1,511.50. This amount matches the Landlord's ledgers and can be calculated by adding \$1,170.60 claimed in the Landlord's L1 with a monthly rent of \$871.80 for the period of September 2021 to January 2022 and subtracting \$6,784.00 paid by the Tenant between November 01, 2022 to June 30, 2023.

Analysis:

6. In this case, the Tenant argued that the N4 is invalid because it does not correctly set out the amount of rent paid by the Tenant. The Tenant argued that the N4 did not meet the Act's technical requirements and was confusing. In closing argument, the TTR admitted that the Tenant "probably" owed the amount of rent claimed by the Landlord but took the position that this tenancy could not be terminated as the N4 was defective.
7. The requirements N4 must meet in terms of setting out the amount of rent owing are set out in s. 59(2) of the Act. It states: "*The notice of termination shall set out the amount of rent due and shall specify that the tenant may avoid the termination of the tenancy by paying, on or before the termination date specified in the notice, the rent due as set out in the notice and any additional rent that has become due under the tenancy agreement as at the date of payment by the tenant.*"
8. Based on all of the evidence adduced at the hearing, I find that it is more likely than not that the N4 correctly sets out the amount of rent due and the amount the Tenant needs to pay to avoid termination. I find that the N4 meets the requirements under the Act. I note that there is nothing in the plain language of s. 59(2) of the Act that would prevent the Landlord from applying payments made by the Tenant to the months so long as the amount of rent due is set out correctly and so long as the N4 is not confusing. I do not find that the N4 was confusing to the Tenant or would be confusing to a reasonable person.

9. The Landlord's evidence that the Tenant's payments were simply applied to the month owing, were credible and reliable. This testimony was supported by detailed and extensive documentary evidence and LLR did not lead any evidence that would support a finding that the arrears of rent were not calculated correctly.

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 \$901.90. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$29.65. This amount is calculated as follows: $\$901.90 \times 12$, divided by 365 days.
5. The Tenant has paid \$6,784.00 to the Landlord since the application was filed.
6. The rent arrears owing to June 30, 2023 are \$1,511.50.
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 \$841.49 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 \$22.82 is owing to the Tenant for the period from January 1, 2021 to June 7, 2023.
10. 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 August 31, 2023 pursuant to subsection 83(1)(b) of the Act to give the Tenant sufficient time to pay the arrears and continue the tenancy.

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:**

- \$2,599.40 if the payment is made on or before July 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$3,501.30 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 Landlord \$138.84. 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 \$29.65 per day for the use of the unit starting June 8, 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 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 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 September 1, 2023.

July 19, 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.

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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 43796 (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	\$9,197.40
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$6,784.00
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	\$2,599.40

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	\$10,099.30
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$6,784.00
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	\$3,501.30

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

Rent Owing To Hearing Date	\$7,601.15
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$6,784.00
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	- \$841.49
Less the amount of the interest on the last month's rent deposit	- \$22.82

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	\$138.84
Plus daily compensation owing for each day of occupation starting June 8, 2023	\$29.65 (per day)