



Order under Section 69 Residential Tenancies Act, 2006

Citation: Demidenko v Henry, 2023 ONLTB 51115

Date: 2023-07-13

File Number: LTB-L-040165-22

In the matter of: 436, 80 MARINE PARADE DR
Toronto ON M8V0A3

Between: Elena Demidenko Landlords
Sergey Demedenko

And

Dwayne Henry Tenant

Elena Demidenko and Sergey Demedenko (the 'Landlords') applied for an order to terminate the tenancy and evict Dwayne Henry (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on May 3, 2023.

Only the Landlords attended the hearing.

The application is amended to include the second named Landlord, Sergey Demedenko, that is listed on the notices of termination.

As of 9:30am, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

L1 Application

1. 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.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$2,390.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$78.58. This amount is calculated as follows: \$2,390.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.

6. The rent arrears owing to May 31, 2023 are \$26,290.00

L2 Application

7. On June 7, 2022 the Landlord gave the Tenant a first N5 Notice of Termination for substantial interference and a claim the Tenant caused \$1,000.00 in damage to the rental unit. The Termination date in the notice is July 16, 2022.
8. The notice alleges that the Tenant refused entry to the Landlords, that the Tenant smokes cannabis in the rental unit in contravention of the condominium bylaws and that the Tenant threw away the Landlords furniture. All instances noted appeared to happen on June 7, 2022.
9. At the hearing the Landlords explained that they received a complaint by email from the Condo Board and then they went to the property to speak with the Tenant. The Tenant pushed the Landlords furniture into the hallway, so the Landlords called the police so that they could enter the unit to inspect it. The police directed the Tenant to put the furniture back inside the unit, but the Landlords were refused entry to the unit.
10. A first N5 notice provides the Tenant with a 7-day voiding period to correct the behaviour after being served the notice. In this instance, the voiding period would be from June 8, 2022 to June 1, 2022.
11. The Landlord testified that on June 9, 2022 the Landlords again attended the property to inspect the unit and they were refused entry again.
12. Based on the uncontested evidence of the Landlords, I am satisfied on a balance of probabilities that the Tenant substantially interfered with the Landlord when they pushed the Landlords furniture out of the rental unit, refused entry to the Landlord to inspect the unit and by smoking cannabis in the unit against the condominium bylaws and that the Tenant did not void the N5 notice.
13. The Landlord led no evidence regarding damages to the rental unit, therefore the portion of the N5 notice dealing with damages is dismissed.
14. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. The application is amended to reflect that the Landlords collected a rent deposit of \$2,390.00 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.
16. Interest on the deposit is owing to the Tenant for the period of October 10, 2020 to the date of the hearing in the amount of \$62.41.
17. The Tenant did not attend the hearing to make submissions regarding their unique circumstances to consider any relief from eviction.
18. The Landlords have been struggling with complaints from the condo board regarding the Tenants conduct in smoking cannabis in the rental unit and common areas of the residential complex. The Landlords have also been suffering financially regarding the non-payment of rent and they have tried working out payment terms with the Tenant, but the Tenant is uncooperative and combative with the Landlord.

19. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

1. Pursuant to the L2 Application, the tenancy between the Landlords and the Tenant is terminated. The Tenant must move out of the rental unit on or before July 24, 2023.
2. The Tenant shall pay to the Landlord any rent arrears owing up to the date of the hearing and the cost of filing the application. The amount of rent deposit and interest the Landlords owe on the rent deposit are deducted from the amount owing by the Tenant.
3. As of the date of the hearing, the Tenant owes the Landlords \$21,869.33*. See Schedule 1 for the calculation of the amount owing.
4. The Tenant shall also pay the Landlord compensation of \$78.58 per day for the use of the unit starting May 4, 2023 until the date the Tenant moves out of the unit.
5. If the Tenant does not pay the Landlord the full amount owing on or before July 24, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 25, 2023 at 6.00% annually on the balance outstanding.
6. If the unit is not vacated on or before July 24, 2023, then starting July 25, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
7. 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 July 25, 2023.

July 13, 2023
Date Issued

 Terri van Huisstede
 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 January 25, 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 as the tenancy is terminated

Rent Owing To Hearing Date	\$24,135.74
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	- \$2,390.00
Less the amount of the interest on the last month's rent deposit	- \$62.41
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	\$21,869.33
Plus daily compensation owing for each day of occupation starting May 4, 2023	\$78.58 (per day)

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