



Order under Section 69 and 78(6) Residential Tenancies Act, 2006

Citation: Febau Canada Limited v Noel, 2023 ONLTB 34247

Date: 2023-07-11

File Number: LTB-L-022534-23

In the matter of: 206, 109 VAUGHAN RD
YORK ON M6C2L9

Between: Febau Canada Limited Landlord

And

Jahnell Noel Tenants
Kriston Mark

Febau Canada Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Jahnell Noel and Kriston Mark (the 'Tenants') and for an order to have the Tenant pay the rent they owe because the Tenant did not meet a condition specified in the order issued by the LTB on February 24, 2023 with respect to application LTB-L-057670-22.

This L4 application heard by videoconference on June 27, 2023.

The Landlord's Legal Representative, Bryan Rubin, and the Tenant, Kriston Mark, attended the hearing. The Tenant spoke to Tenant Duty Counsel prior to the hearing.

Determinations:

1. The order provides that the Landlord can apply to the LTB under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') without notice to the Tenants to terminate the tenancy and evict the Tenants if the Tenant does not meet certain condition(s) in the order. This application was filed within 30 days of the breach.
2. The L4 application, as filed, was sent to a Board hearing because the amount being claimed exceeds the Board's monetary jurisdiction.
3. Specifically, the amount owing under the Board Order of \$35,320.80 is still owing plus an additional amount of \$10,152.12 for rent not paid for the period of March 1, 2023 to June 27, 2023 inclusively. The total amount claimed is therefore \$43,243.45.
4. With respect to the Board's monetary jurisdiction that is set out in subsection 207(1) of the Act, the Landlord's Legal Representative confirmed at the hearing that the Landlord agrees to attorn to the Board's jurisdiction and waives any amount above the Board's monetary jurisdiction of \$35,000.00.

5. The previous application included a request for an order for the payment of arrears of rent. The resulting order required the Tenants to pay rent and arrears of rent. Accordingly, in addition to eviction, the Landlord is entitled to request an order for the payment of arrears of rent and compensation.
6. The Tenant was required to pay \$35,506.80 for rent arrears and the application filing fee in the previous order. The amount that is still owing from that order is \$35,506.80 and that amount is included in this order. This order replaces order LTB-L-057670-22.
7. The Tenant testified the other Tenant did not make him aware of the payment arrangements made on February 13, 2023 however after learning of the agreement, he did not file a request to review the order with the Board. He stated the rent has not been paid and he does not have available funds to satisfy the original payment arrangements.
8. The Tenant sought to preserve the tenancy by proposing a new payment plan in which he would pay the Landlord the lawful monthly rent plus an additional \$500 per month until the arrears were satisfied.
9. The Landlord's Legal Representative submitted that the arrears are significant and exceed the Board's monetary jurisdiction. He added the Tenant has not paid the rent in over a year and therefore the Landlord is seeking a non-voidable order as the Tenant is in breach of the order issued on February 24, 2023.

The breach

10. Based on the submissions of the parties at the hearing, I find that the Tenants have not met the following condition specified in the order:
 - The Tenants did not pay the Landlord the monthly rent for March 2023 which was due on March 1, 2023.
11. Since the date of the order and based on the submissions of the parties, I also find the Tenants have failed to pay any of the rent arrears payments under the order and the full rent that became due over the three month period of April 1, 2023 to June 1, 2023 inclusively.
12. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. In making this finding, I considered the Tenants' proposed payment plan and found it to be unreasonable as it would extend over seven years. The current arrears are significant and beyond the Board monetary jurisdiction and I find any delay would be unfairly prejudicial to the Landlord.

The rent deposit

13. The Landlord collected a rent deposit of \$2,327.60 from the Tenants and this deposit is still being held by the Landlord.
14. Interest on the rent deposit in the amount of \$87.87 is owing to the Tenants for the period from July 1, 2021 to July 11, 2023.

15. The amount of the rent deposit and interest on the rent deposit is applied to the amount the Tenants are required to pay.

Daily compensation

16. The Landlord is entitled to daily compensation from the day after this order is issued to the date the Tenant moves out of the unit at a daily rate of \$76.52. This amount is calculated as follows: \$2,327.60 x 12, divided by 365 days.

It is ordered that:

1. Order LTB-L-057670-22 is cancelled and replaced with the following order.
2. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before July 22, 2023.
3. If the unit is not vacated on or before July 22, 2023, then starting July 23, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
4. 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 23, 2023.
5. The Tenants shall pay to the Landlord \$35,186.00. This amount represents the rent owing up to July 11, 2023 and the cost of filing the previous application, less the rent deposit and interest the Landlord owes on the rent deposit.
6. The Tenants shall pay to the Landlord \$76.52 per day for compensation for the use of the unit starting July 12, 2023 to the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before July 22, 2023, the Tenant will start to owe interest. This will be a simple interest calculated from July 23, 2023 at 6.00% annually on the balance outstanding.

July 11, 2023

Date Issued

Susan Priest

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,
Toronto ON M7A 2G6

The Tenant has until July 21, 2023 to file a motion with the LTB to set aside the order under s. 78(9) of the Act. If the tenant files the motion by July 21, 2023 the order will be stayed and the LTB will schedule a hearing.

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 23, 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.

* Refer to the attached Summary of Calculations.

Summary of Calculations**Amount the Tenants must pay the Landlord as the tenancy is terminated:**

Reason for amount owing	Period	Amount
Amount owing from previous order	Up to February 28, 2023	\$35,506.80
New Arrears	March 1, 2023 to July 11, 2023	\$10,152.12
New NSF cheque charges and related administration charges		\$0.00
Less the rent deposit:		-\$2,327.60
Less the interest owing on the rent deposit	July 1, 2021 to July 11, 2023	-\$87.87
Less the amount above the Board's monetary jurisdiction being waived by the Landlord		-\$10,658.92
Plus daily compensation owing for each day of occupation starting July 12, 2023		\$76.52 (per day)
Total the Tenants must pay the Landlord:		\$35,186.00 +\$76.52 per day starting July 12, 2023

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