



Order under Section 69 Residential Tenancies Act, 2006

Citation: Killam Apartment REIT v Sydney Mcrae, 2023 ONLTB 47760

Date: 2023-07-04

File Number: LTB-L-018583-23

In the matter of: 215, 1047 CANADIAN SHIELD AVE
KANATA ON K2K0H4

Between: Killam Apartment REIT Landlord

And

Sydney Mcrae Tenant

Killam Apartment REIT (the 'Landlord') applied for an order to terminate the tenancy and evict Christopher Lysen, Ronald Lysen and Sydney Mcrae (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on June 22, 2023.

The Landlord's Legal Representative, Donna Dames, and the Tenant attended the hearing.

Determinations:

1. Ronald Lysen is removed as a Tenant in this application as he is a co-signor/guarantor not a tenant.
2. The Tenant stated that Christopher Lysen vacated the rental unit in May 2022. The Landlord's Legal Representative submitted that the Landlord was not aware that Christopher Lysen vacated as he did not provide any notice. The Landlord's Legal Representative submitted that Christopher Lysen remains liable pursuant to the Lease Agreement.
3. I find that Christopher Lysen must also be removed as a Tenant from this application as he was not in possession of the rental unit at the time of filing this application. While the Board does now have authority to order rent arrears against a Tenant no longer in possession of the rental unit, I am not satisfied that Christopher Lysen was served with the Notice of Hearing and Application for today's proceeding in accordance with subsection 191(1.0.1) of the *Residential Tenancies Act, 2006* ("Act").
4. Subsection 87(1) of the Act states that:

A landlord may apply to the Board for an order requiring a tenant or former tenant to pay arrears of rent if,

- (a) the tenant or former tenant did not pay rent lawfully required under the tenancy agreement; and
- (b) in the case of a tenant or former tenant no longer in possession of the rental unit, the tenant or former tenant ceased to be in possession on or after the day subsection 18 (1) of Schedule 4 to the *Protecting Tenants and Strengthening Community Housing Act, 2020* comes into force. 2020, c. 16, Sched. 4, s. 18 (1).

5. Subsection 191(1.0.1) of the Act states that:

Despite subsection (1), a notice or document is sufficiently given to a tenant or former tenant who is no longer in possession of a rental unit,

- (a) by handing it to the tenant or former tenant;
- (b) by sending it by mail to the address where the tenant or former tenant resides;
- (c) by handing it to an apparently adult person where the tenant or former tenant resides; or
- (d) by any other means allowed in the Rules

- 6. 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.
- 7. As of the hearing date, the Tenant was still in possession of the rental unit.
- 8. The lawful rent is \$2,013.88. It is due on the 1st day of each month.
- 9. Based on the Monthly rent, the daily rent/compensation is \$66.21. This amount is calculated as follows: $\$2,013.88 \times 12$, divided by 365 days.
- 10. The Tenant has paid \$1,000.00 to the Landlord since the application was filed.
- 11. The Tenant did not dispute that rent arrears owing to June 30, 2023 are \$11,897.30.
- 12. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
- 13. The Landlord collected a rent deposit of \$1,990.00 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.
- 14. Interest on the rent deposit, in the amount of \$67.63 is owing to the Tenant for the period from August 6, 2021 to June 22, 2023.

Relief from Eviction

15. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of 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 July 31, 2023 pursuant to subsection 83(1)(b) of the Act.
16. The Landlord's Legal Representative requested a standard order given that the arrears are significant.
17. The Tenant requested a delay until the end of July 2023 to allow her some time to vacate the rental unit. She has lived in the unit for almost two years and is a single mother of a 2-year-old child.
18. I find the short delay in the eviction until July 31, 2023 is fair in the circumstances given the length of this tenancy and that the Landlord is still holding a last month's rent deposit.

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:**
 - \$14,097.18 if the payment is made on or before July 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 July 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 July 31, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$9,468.41. 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 \$66.21 per day for the use of the unit starting June 23, 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 15, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 16, 2023 at 6.00% annually on the balance outstanding.
8. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

9. If the unit is not vacated on or before July 31, 2023, then starting August 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

10. 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 August 1, 2023.

July 4, 2023

Date Issued

Lisa Del Vecchio
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 February 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.

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	\$14,911.18
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,000.00
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	\$14,097.18

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

Rent Owing To Hearing Date	\$12,340.04
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,000.00
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	- \$1,990.00
Less the amount of the interest on the last month's rent deposit	- \$67.63
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	\$9,468.41
Plus daily compensation owing for each day of occupation starting June 23, 2023	\$66.21 (per day)