



Order under Section 74.2 and 69 Residential Tenancies Act, 2006

Citation: Stephanie Barbosa v Calvin Boyle, 2023 ONLTB 46387

Date: 2023-06-30

File Number: LTB-L-034920-22

In the matter of: 3, 516 THIRD ST
LONDON ON N5V2C2

Between: Paul Barbosa and Stephanie Barbosa Landlords

And

Kalvin Boyle Tenant

Paul Barbosa and Stephanie Barbosa (the 'Landlords') applied for an order to terminate the tenancy and evict Calvin Boyle (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

AND

Paul Barbosa and Stephanie Barbosa (the 'Landlords') applied for an order to terminate the tenancy and evict Calvin Boyle (the 'Tenant') because:

- the Tenant has been persistently late in paying the Tenant's rent.

The Landlords also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on June 15, 2023.

The Landlord Stephanie Barbosa and the Tenant attended the hearing.

L1 Application – N4 non-payment of rent

1. The Tenant paid the Landlords for the period ending June 30, 2023. The amount paid represents all the rent that was in arrears under the tenancy agreement, all additional rent that would have been due under the tenancy agreement on the date of the Tenant's payment, and the filing fee for this application.

2. The Landlords application for an order terminating the tenancy and evicting the Tenant based upon arrears of rent is discontinued to June 30, 2023.

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L2 Application – N8 persistent late payment of rent

Determinations:

1. The Tenant was in possession of the rental unit on the date the application was filed.
2. On June 20, 2022, the Landlord gave the Tenant an N8 notice of termination deemed served on June 20, 2022. The notice of termination contains the following allegations:
 - “Kalvin has consistently paid rent late, Rent is due on or before the 1st day of each month as per the lease signed October 7, 2013. Since November 2021 his rent payments have been consistently late paying on the following dates:
 - November 2021 Rent received - November 25, 2021
 - December 2021 Rent received - December 19, 2021
 - January 2022 Rent received - January 23, 2022
 - February 2022 Rent received - February 18, 2022
 - March 2022 Rent received - March 17, 2022
 - April 2022 Rent received - April 16, 2022
 - May 2022 Rent received - May 17, 2022
 - June 2022 Rent - still outstanding and not paid. L1 Application for eviction has been submitted.”
3. The Landlord has proven that the Tenant has persistently failed to pay the rent on the date it was due. The rent is due on the 1st day of each month. The rent has been paid late 8 times in the 8 months as outlined above and as indicated in the N8 notice as of the application filing time on June 21, 2022.
4. The Landlord submitted that the Tenant has been paying rent late as a pattern for the past four years, is flexible in arriving at a move out with the Tenant as the Landlords are seeking an eviction order.
5. The Tenant submitted that while he does not dispute the late payment dates as submitted, since the Landlords N8 notice and since the application filing he has only been late one time in the payment of rent in the month of December 2022, and this was because of

Christmas associated expenses. The Tenant further submitted that if allowed to maintain his tenancy he will continue to pay rent on time on the first (1st) of the month.

6. The Landlord confirmed the Tenant's submissions, that is, that he has only been late one time since being served the N8 Notice of Termination for the rent payment of December 2022. Effectively, as of the date of the hearing resulting in payments of rent on time for the last six (6) month period.

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Relief from eviction

7. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (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 subsection 83(1)(a) and 204(1) of the Act. In making this finding, I consider the fact this is a long-term tenancy, that the Tenant has been paying his rent on time for the last six months and the Tenant does not want to move. I also considered the Landlord's right to collect the rent on the day it is due, being the 1st day of each month. In this matter, I find it appropriate to grant relief from eviction by way of a conditional order that is subject to s.78 of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
2. The Tenants shall pay their lawful monthly rent as per the lease agreement to the Landlord in full and on time, on or before the first day of each month, commencing August 1, 2023 and for 12 months thereafter up to and including July 31, 2024.
3. If the Tenant fails to comply with the conditions set out in paragraph 2 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.
4. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.

5. If the Tenant does not pay the Landlord the full amount owing on or before July 11, 2023 the Tenant will start to owe interest. This will be simple interest calculated from July 12, 2023 at 6.00% annually on the balance outstanding.

June 30, 2023

Date Issued

Alicia Johnson

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.