



Order under Section 69 Residential Tenancies Act, 2006

Citation: OTTAWA COMMUNITY HOUSING v Diane Pfeifer, 2023 ONLTB 46398

Date: 2023-06-27

File Number: LTB-L-076584-22

In the matter of: 1008, 1365 BANK ST
OTTAWA ON K1H 8K8

Between: OTTAWA COMMUNITY HOUSING Landlord

And

Diane Pfeifer Tenant

OTTAWA COMMUNITY HOUSING (the 'Landlord') applied for an order to terminate the tenancy and evict Diane Pfeifer (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on May 24, 2023.

Only the Landlord's agent Amanda Scobie attended the hearing.

As of 9:59 a.m. 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.

Preliminary Issue:

1. The Landlord's agent raised a preliminary issue for the Board to consider as to whether the Tenant was still in possession of the unit. For the reasons outlined below, I find it is more likely than not, the Tenant is still in possession of the unit.
2. The Landlord's agent submitted that they suspected the unit may be abandoned as they have not heard from the Tenant or seen the Tenant since March 16, 2023. The Landlord's agent also submitted that the property manager changed the locks on March 16, 2023 leaving instructions to the Tenant to contact the property manager should they wish to regain access to the unit. The Landlord did receive a partial payment for rent in March.

3. After consideration of all the evidence, I find it is more likely than not, the Tenant is still in possession of the unit. The mere appearance of the unit being vacant and non payment of rent is not sufficient to determine that the unit is actually abandoned. The Tenant is also under no obligation to disclose to the Landlord their whereabouts. The Tenant has not returned the keys to the unit, nor informed the Landlord or the Landlord's agent of the Tenant's intention to vacate the unit. The Landlord did not present any evidence related to the Tenant informing the Landlord about their intent to vacate the unit and the agent clarified that the Tenant would have full access to the unit, despite the fact the locks were changed, should they contact the property manager.

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 \$1,199.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$39.42. This amount is calculated as follows: \$1,199.00 x 12, divided by 365 days.
5. The Tenant has made \$957.00 in payments since the application was filed.
6. The rent arrears owing to May 31, 2023 are \$12,049.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.

Relief from Eviction

9. 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 postpone the eviction until July 31, 2023 pursuant to subsection 83(1)(b) of the Act.
10. At the hearing, the Landlord's agent requested the void date be delayed to July 31, 2023 to provide the Tenant with sufficient time to pay the balance of the arrears outstanding. As the matter was uncontested, I find this request is reasonable after considering all the circumstances insofar it would not be unfair to delay the eviction until July 31, 2023.

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:**

- \$13,484.00 if the payment is made on or before June 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$14,633.00 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 \$11,959.06. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
 6. The Tenant shall also pay the Landlord compensation of \$39.42 per day for the use of the unit starting May 25, 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 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 1, 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.

June 27, 2023

Date Issued

Greg Witt

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 9, 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 June 30, 2023

| | |
|----------------------------------------------------------------------------------------|--------------------|
| Rent Owing To June 30, 2023 | \$13,248.00 |
| 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 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 | \$13,484.00 |

B. 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 | \$14,447.00 |
| 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 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 | \$14,633.00 |

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

| | |
|----------------------------------------------------------------------------------------|-------------|
| Rent Owing To Hearing Date | \$11,773.06 |
| 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 | - \$0.00 |
| Less the amount of the interest on the last month's rent deposit | - \$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 amount owing to the Landlord | \$11,959.06 |
| Plus daily compensation owing for each day of occupation starting May 25, 2023 | \$39.42 (per day) |