



Order under Section 69 Residential Tenancies Act, 2006

Citation: Richard Mathews v Walter Creglia, 2023 ONLTB 45111

Date: 2023-06-23

File Number: LTB-L-001819-23

In the matter of: 19 WEYBRIDGE CRT
ETOBICOKE ON M9B2Y8

Between: Karolyn Mathews and Landlord
Richard Mathews

And

Walter Creglia Tenant

Karolyn Mathews and Richard Mathews (the 'Landlord') applied for an order to terminate the tenancy and evict Walter Creglia (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on June 6, 2023.

The Landlord's legal representative, Natasha Mizzi, and the Landlord, attended the hearing.

The Tenant also attended the hearing.

The Landlord's claim for arrears exceeds the Board's monetary jurisdiction of \$35,000.00. The Landlord indicated a desire to proceed with the hearing of the application and voluntarily waived the portion of the claim that exceeds the Board's monetary jurisdiction.

Determinations:

Preliminary: Tenant Requested Adjournment

1. The Tenant requested an adjournment and cited his legal representation was out of the country and not returning until sometime in July.

2. The Tenant disputed the arrears and stated he needed his legal representative present as she has all of the information on his file and to proceed would be unfair.
3. The Tenant stated his legal representation has been retained since the beginning of the file and he required his legal representation to be present in order to be properly represented.
4. The Landlord's legal representative did not consent to the adjournment and submitted to the Board, that the Tenant had legal representation on another matter in another court for a file that was on appeal.
5. The Landlord's legal representative reached out to the Tenant's legal representative for that other matter and asked if she was representing the Tenant on the LTB matter. The Tenant's legal representative on the other matter confirmed with Landlord's legal representative Natasha Mizzi that she was not retained to represent the Tenant on the LTB file.
6. As of the day of the hearing the Landlord's legal representative had not received notice from any legal representative that had ben retained by the Tenant for the LTB matter.
7. Also I make note, that there was no request to reschedule or any adjournment request submitted to the Board prior to the hearing.
8. The notice of hearing was mailed out April 21, 2023 to the Tenant which allowing for 5 days mailing would have left the Tenant with approximately 6 weeks of time to acquire legal representation for the hearing or file a request to reschedule.

The Board's Guidelines for Adjournment Requests

9. The Guideline in part states:

Where the Member is satisfied that the party has received sufficient notice of the hearing and has been provided with an adequate opportunity to prepare their evidence and submissions, summons witnesses and obtain counsel ahead of the hearing date, an adjournment is not usually granted unless there are exceptional circumstances.

The specific factors the Member may consider in deciding whether to grant an adjournment include:

- 1) the reason for the adjournment and position of the parties;
- 2) the issues in the application;
- 3) any prejudice that may result from granting or denying the request;
- 4) the history of the proceeding including other adjournments or rescheduling;

- 5) the LTB's obligation to adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and be heard on the matter.

Adjournment to Allow Representation

Section 10 of the SPPA states that a party may be represented by a representative at a hearing. However, **the right to representation is not absolute and an adjournment is not automatically granted when it is requested on this ground**. The onus is on the party wishing to be represented to make all reasonable efforts to find a lawyer or paralegal able to represent them at the hearing once they become aware of the hearing date.

[Emphasis added.]

10. Based on the submissions from the Tenant I denied the Tenants request for an adjournment, with respect to the Board's Guidelines for the following reasons.
11. In my opinion, the Tenant had been given sufficient notice of hearing having had 6 weeks to acquire legal representation, or for the Tenant to prepare for the hearing himself to discuss the arrears.
12. The arrears the Landlord is claiming are substantial and exceed the Board's jurisdictional monetary limit, and an adjournment would further prejudice the Landlord. The Tenant has not made any payment since May 2021.
13. There were no section 82 issues submitted by the Tenant prior the hearing and the only matter at dispute are the arrears. Adjourning the hearing would not be the most expeditious method of dealing with the Landlord's application, as both parties were both present.

Landlord's L1 Application

14. 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.
15. The arrears of rent owing for the period ending June 30, 2023, exceeds the jurisdiction of the Board which is \$35,000.00. However, pursuant to subsection 207(1) of the [Residential Tenancies Act, 2006](#) (the 'Act'), the Board may not order payment of an amount more than the monetary jurisdiction of the Small Claims Court, which is \$35,000.00. The Tenant will therefore be ordered to pay \$35,000.00 for their arrears if they vacate the rental unit.

Subsection 207(1) of the Act does not apply to the amount to be paid if the Tenants wish to void the order, as this is an optional payment.

16. As of the hearing date, the Tenant was still in possession of the rental unit.
17. The lawful rent is \$1,900.00. It is due on the 1st day of each month.
18. Based on the Monthly rent, the daily rent/compensation is \$62.47. This amount is calculated as follows: \$1,900.00 x 12, divided by 365 days.
19. The Tenant has not made any payments since the application was filed.
20. The rent arrears owing to June 30, 2023 are \$47,500.00.
21. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
22. There is no last month's rent deposit.
23. The position of the Landlord is that the Tenant has not made any payments since May 2021. The arrears have exceeded the Board's monetary jurisdictional amount of \$35,000.00.
24. The position of the Tenant is he disputes the arrears and claims the Landlord has not accounted for payments made by the Tenant. The Tenant claims there are cash payments the Landlord has not accounted for. The Tenant did not submit any documentary evidence in the form of receipts or bank statements to the Board prior to the hearing to support his claim.
25. The Tenant submitted he had heart health issues although the Tenant did not provide specific details on what those issues are, nor did the Tenant submit any doctor notes, or medical reports to support his claim.
26. 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. Given the quantum of arrears exceeds the Board's monetary jurisdictional amount, the fact no payments have been made since May 2021, and weighed this against the Tenant's unsubstantiated claims of heart problems, and I find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
27. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
28. This order contains all reasons for the determinations and order made. No further reasons will be issued.

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:
 - \$47,686.00 if the payment is made on or before June 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$49,586.00 if the payment is made on or before July 4, 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 4, 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 4, 2023
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$46,160.82. 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 \$62.47 per day for the use of the unit starting June 7, 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 4, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 5, 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 4, 2023, then starting July 5, 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 July 5, 2023.

June 23, 2023

Date Issued

Greg Brocanier

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 5, 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.

*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

**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	\$47,500.00
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	\$47,686.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before July 4, 2023

Rent Owing To July 31, 2023	\$49,400.00
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	\$49,586.00

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

Rent Owing To Hearing Date	\$45,974.82
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	\$46,160.82
Plus daily compensation owing for each day of occupation starting June 7, 2023	\$62.47 (per day)