



Order under Section 69 Residential Tenancies Act, 2006

Citation: PAT & DIA Limited v Joseph Fasullo, 2023 ONLTB 43993

Date: 2023-06-23

File Number: LTB-L-079020-22

In the matter of: 209, 45 BARLAKE AVE
HAMILTON ON L8E3R6

Between: PAT & DIA LIMITED

Landlord

And

Joseph Fasullo

Tenant

PAT & DIA LIMITED (the 'Landlord') applied for an order to terminate the tenancy and evict Joseph Fasullo (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlord also claimed charges related to NSF cheques.

This application was heard by videoconference on June 5, 2023.

The Landlord's Representative Daniel Moak attended the hearing.

As of 4:20 pm, 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.

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 \$1,222.60. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$40.20. This amount is calculated as follows: \$1,222.60 x 12, divided by 365 days.

5. The Tenant has paid \$4,518.86 since the application was filed.
6. The rent arrears owing to June 30, 2023 are \$3,330.42.
7. The Landlord is entitled to \$160.00 to reimburse the Landlord for administration charges that the Landlord incurred as a result of 8 cheques given by or on behalf of the Tenant which were returned NSF.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$995.00 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.
10. Interest on the rent deposit, in the amount of \$94.87 is owing to the Tenant for the period from June 1, 2017 to June 5, 2023.
11. 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 and whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
12. For example, the Landlord was not aware of any circumstances which would render eviction unfair, and noted that the rent for April and May was not paid.
13. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.

It is ordered that:

Pay and Stay:

14. The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:

1. \$3,676.42 if the payment is made on or before June 30, 2023. See Schedule 1 Chart A for the calculation of the amount owing.
 2. \$4,899.02 if the payment is made after June 30, 2023 but on or before July 4, 2023. See Schedule 1 Chart B for the calculation of the amount owing.
15. 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 June 27, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.

Pay and Go:

16. **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**
17. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$1,564.45. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application and unpaid NSF charges. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 Chart C for the calculation of the amount owing.
18. The Tenant shall also pay the Landlord compensation of \$40.20 per day for the use of the unit starting June 6, 2023 until the date the Tenant actually moves out of the rental unit or gets evicted.
19. 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.
20. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
21. 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.
22. 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

Michelle Tan/ James Campbell

Vice Chair/ 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.

**Schedule 1
SUMMARY OF CALCULATIONS**

Pay and Stay

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	\$3,330.42
Application Filing Fee	\$186.00
NSF Charges	\$160.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Total the Tenant must pay to continue the tenancy	\$3,676.42

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made after June 30, 2023 but on or before July 4, 2023

Rent Owing To July 4, 2023	\$4,553.02
Application Filing Fee	\$186.00
NSF Charges	\$160.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Total the Tenant must pay to continue the tenancy	\$4,899.02

Pay and Go:

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

Rent Owing To Hearing Date	\$2,308.32
Application Filing Fee	\$186.00
NSF Charges	\$160.00

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Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$995.00
Less the amount of the interest on the last month's rent deposit	- \$94.87
Total amount owing to the Landlord	\$1,564.45
Plus daily compensation owing for each day of occupation starting June 6, 2023	\$40.20 (per day)