



Order under Section 69 Residential Tenancies Act, 2006

Citation: Proper Property Mgmt v Lance Wong, 2023 ONLTB 46035

Date: 2023-06-22

File Number: LTB-L-082299-22

In the matter of: 4, 60 MARLBOROUGH AVE
Ottawa ON K1N8E9

Between: Proper Property Mgmt Landlord

And

Lance Wong Tenant

Proper Property Mgmt (the 'Landlord') applied for an order to terminate the tenancy and evict Lance Wong (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

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

The Landlord's Agents, John Dimitrijevic and Terry McDonald, and the Tenant attended the hearing.

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 \$1,609.65. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$52.92. This amount is calculated as follows: $\$1,609.65 \times 12$, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to June 30, 2023 are \$37,264.50.

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.
9. The Tenant testified that he did not agree with the amount owing because the Landlord raised the rent illegally in 2021 during COVID19; the Tenant did not have any evidence supporting his claim and did not know the exact date the rent was increased.
10. Based on the testimony before me, I find the Tenant owes 37,450.50 to June 30, 2023, including the application filing fee; the Tenant has no evidence supporting his assertion. Further, section 135.1 of the *Residential Tenancies Act, 2006* (the 'Act') says a rent increase is deemed valid unless it is challenged within 1-year from the Notice of Rent Increase. Here, even if the rent was raised December 1, 2021, the Tenant only had until November 30, 2022 to challenge the increase. Further, the Tenant did not deny having made no payments in almost a year, therefore the Tenant should have been aware of the amount owing.
11. The Tenant then argued that he did not receive the N4 notice. The Landlord mailed the notice to the Tenant on December 15, 2022, therefore according rule 3 of the Board's Rules of Practice, it was deemed served 5-days later. For this reason, and the fact that the Tenant is not denying he has made no payment
12. 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. The Landlord testified that he contacted the Tenant a number of times about when he was able to pay the arrears. The Tenant requested 23 months before he had to vacate, or as long as possible, due to health issues; he has an upcoming operation but does not know when it will be scheduled. The Tenant has not made any payments since a partial rent payment in July 2022, although it is understandable that he has concerns about the timing of his upcoming operation, to extend the date beyond the standard 11-day time is extremely prejudicial to the Landlord as the amount owing already exceeds the Board's jurisdiction of \$35,00.00 and the Tenant testified that he is unable to pay.
13. **The amount referenced in paragraph 2 below is not subject to section 207(1) of the Residential Tenancies Act, 2006 (the 'Act'), which limits the Boards monetary jurisdiction to \$35,000.00 plus the application filing fee. In *Hornstein et al. v. Royal Bank*, 2010 ONSC 3134, the Divisional Court granted the Landlord's motion to dismiss the Tenant's appeal of the Landlord Tenant Board order, saying:**

[10] Section 201(1) gives the Board power to order payment to any given person of a sum of money not exceeding the monetary jurisdiction of the Small Claims Court.

[11] Section 74(5) and (6) provide for the voiding of an order before the order becomes enforceable; the subsections require payment to the landlord or the Board of the amount specified pursuant to the eviction order.

[12] Section 74(11) provides for the voiding of an eviction order after it becomes enforceable, upon payment of the outstanding arrears of rent.

[13] To hold that the monetary cap applies to the “outstanding arrears of rent” would result in an absurdity. The defaulting tenant could continue *ad infinitum* to merely pay the monetary limit and continue in possession, all the while continuing to default. (emphasis added)

14. This order contains all the reasons for the decision within it. No further reasons shall 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:**
 - \$37,450.50 if the payment is made on or before June 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$39,060.15 if the payment is made on or before July 3, 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 3, 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 3, 2023**
1. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$36,105.45. 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. **This amount is subject to the monetary jurisdiction set out in section 207(1) of the Act, therefore, the Landlord is entitled to a maximum of \$35,000.00.**

5. The Tenant shall also pay the Landlord compensation of \$52.92 per day for the use of the unit starting June 6, 2023 until the date the Tenant moves out of the unit.
6. If the Tenant does not pay the Landlord the full amount owing on or before July 3, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 4, 2023 at 6.00% annually on the balance outstanding.
7. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
8. If the unit is not vacated on or before July 3, 2023, then starting July 4, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. 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 4, 2023.

June 22, 2023

Date Issued

Diane Wade

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 4, 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	\$37,264.50
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	\$37,450.50

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before July 3, 2023

Rent Owing To July 31, 2023	\$38,874.15
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	\$39,060.15

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

Rent Owing To Hearing Date	\$35,919.45
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	- \$
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	\$36,105.45
Plus daily compensation owing for each day of occupation starting June 6, 2023	\$52.92 (per day)