



Order under Section 69 Residential Tenancies Act, 2006

Citation: 1459 Trafalgar Investment Inc v Dale Harshell, 2023 ONLTB 41424

Date: 2023-06-09

File Number: LTB-L-075459-22

In the matter of: 317, 1459 TRAFALGAR ST
LONDON ON N5W1W8

Between: 1459 Trafalgar Investment Inc Landlord

And

Dale Harshell Tenant

1459 Trafalgar Investment Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Dale Harshell (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

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

The Landlord's Legal Representative Sabrina Sciuilli and the Tenant attended the hearing.

Preliminary Issue:

1. Prior to the hearing commencing, I questioned Ms. Sciuilli about the Tenants last name being Haskell. The Tenant indicated that during check in and at this stage of the proceeding, the Tenant was referred his last name as Haskell. I asked for submissions from Ms. Sciuilli about the Tenant last name being Haskell and not Harshell.
2. Ms. Sciuilli stated all documents the Landlord has received from the Tenant have had the last name of Harshell, this was the last name provided by the Tenant, so this is what the Landlord put in the Notice of Termination.
3. The Tenant responded and stated that Harskell is his last name, not Harshell.
4. I find the Landlord has the correct last name listed in the N4 Notice of Termination. The Tenant provided no evidence to support that the Landlord had his last name spelt incorrectly. The Tenant provided no evidence such as a drivers license or the lease

agreement as supportive evidence. The Tenant just uttered "that is not my last name". If the Landlord spelt the Tenants last name incorrectly, the Tenant ought to have brought some evidence to refute that claim.

5. I was satisfied that the Tenants name is spelt correctly on the Notice of Termination and proceeded with 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 \$1,200.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$39.45. This amount is calculated as follows: \$1,200.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to May 31, 2023 are \$11,185.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Tenant did not dispute that he owes the Landlord \$11,371.00, in fact he agreed with the total amount of rent arrears he owes.
9. The Landlord collected a rent deposit of \$1,200.00 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 \$31.25 is owing to the Tenant for the period from November 1, 2021 to May 24, 2023.
11. I asked both parties about submissions on eviction. Ms. Scullli stated the Landlord will be seeking a 11-day standard order.
12. The Tenant stated that in October 2022, he was assaulted by several culprits and injured. As a result of the assault, he could not work and eventually lost his job. He was able to get employment in November 2022 but only worked one day, as his car had broken down and he was unable to get to work. The Tenant stated he is starting a new job which was to begin May 25, 2023.
13. The Tenant mentioned several times during the hearing that he wishes to stay at the rental unit and wishes a payment plan. It was discovered the Tenant had offered the Landlord a

\$200.00 per month payment plan until the arrears got to zero, the Landlord had rejected that plan given the number of years it would have taken to resolve.

14. When I examine the submissions by both parties, an eviction will be ordered against the Tenant. The Tenant has not paid rent since October 2022 and the arrears have continued to accumulate. The Tenant could have approached the Landlord about a payment plan well in advance of the hearing date, instead remained silent on the issue. The Tenant could have paid down the arrears without a payment plan and make a good faith effort in paying some of the arrears down. Instead, the Tenant chose not to pay the Landlord, even if it was a small amount towards the arrears.
15. The Tenant stated his car had broken down 3 times and he borrowed \$3,000 to fix the car. Granted he needed to get to work, but that happened in November 2022. It appears the Tenant chose to prioritize fixing his car than paying the Landlord.
16. When I examine the prejudice to the Landlord, rent has not been paid since October 2022, that is over 7 months, since the Tenant made any payments towards rent. This is prejudicial to the Landlord as rent should be paid by the Tenant.
17. 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 June 30, 2023 pursuant to subsection 83(1)(b) of the Act.

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:**
 - \$12,571.00 if the payment is made on or before June 30, 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 June 30, 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 June 30, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$9,886.55. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.

6. The Tenant shall also pay the Landlord compensation of \$39.45 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 June 20, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 21, 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 June 30, 2023, then starting July 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 July 1, 2023.

2023 ONLTB 41424 (CanLII)

June 9, 2023

Date Issued

Anthony Bruno

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 1, 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	\$12,385.00
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	\$12,571.00

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

Rent Owing To Hearing Date	\$10,931.80
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	- \$1,200.00
Less the amount of the interest on the last month's rent deposit	- \$31.25
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	\$9,886.55
Plus daily compensation owing for each day of occupation starting May 25, 2023	\$39.45 (per day)