



Order under Section 78(6) Residential Tenancies Act, 2006

Citation: Curtis v Evans, 2023 ONLTB 41393

Date: 2023-06-08

File Number: LTB-L-014917-23

In the matter of: 444 SCOTTSDALE DR GUELPH
ON N1G2Z8

Between: Dean Curtis Landlord

and

Denis Foote and Tamia Evans Tenant

Dean Curtis (the 'Landlord') applied for an order to terminate the tenancy and evict Denis Foote and Tamia Evans (jointly referred to as the 'Tenant' in this Order) and for an order to have the Tenant pay the rent they owe because the Tenant did not meet a condition specified in the order issued by the LTB on November 3, 2022 with respect to application LTB-L-055648-22.

By endorsement dated April 12, 2023, this application was directed to hearing.

This application was heard by videoconference on May 3, 2023.

The Landlord's Legal Representative, Lisa Nadon, the Landlord, and the Tenant attended the hearing. The Tenant declined the opportunity to speak with Duty Counsel prior to the start of the proceeding.

By endorsement dated May 8, 2023, the hearing was reconvened to continue by way of written submissions with respect to a payment to be made by the Tenant on or before May 23, 2023. The submissions received in accordance with that endorsement were considered as part of the hearing as set out below.

Determinations:

1. Order LTB-L-055648-22 issued on November 3, 2022 (the 'Order'), provides the Tenant was to pay the Landlord \$6,868.80 for arrears and costs up to October 31, 2022, by paying \$2,200.00 on or before December 1, 2022, \$200.00 a month commencing on or before January 1, 2023 and continuing until November 1, 2024, and \$68.80 on or before December 1, 2024. In addition, the Tenant was to pay the rent in full and on time on or before the 1st of each month while arrears were outstanding.
2. The Order also provides the Landlord can apply to the LTB under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') without notice to the Tenant to terminate the tenancy and evict the Tenant if the Tenant does not meet the above conditions.
3. The Tenant admitted they did not pay rent on the 1st of February 2023 nor did they pay \$200.00 on or before February 1, 2023.
4. As a result, I find the Tenant has not met the following conditions specified in the Order.
 - a. Payment of \$200.00 on February 1, 2023; and
 - b. Payment of rent in full and on time on February 1, 2023.
5. This application was filed on February 13, 2023, and was therefore filed in time as it was filed within 30 days of the above breaches.
6. The parties agreed that up to May 3, 2023, the Tenant had paid \$3,400.00 towards arrears. As a result, to May 3, 2023, the amount that was still owing from the Order was \$3,468.80.
7. The previous application includes a request for an order for the payment of arrears of rent and the Order requires the Tenant to make payments by specific due dates. Accordingly, in addition to eviction, the Landlord is entitled to request an order for the payment of arrears owing.
8. The lawful rent increased on February 1, 2023 to \$2,385.79. Since the Order, the Tenant has failed to pay the full rent that became owing for the period from February 1, 2023 to May 31, 2023.
9. As a result, as at May 3, 2023, the amount outstanding, including the arrears and costs from the Order, and new arrears to May 31, 2023, was \$13,011.96.

Section 83 considerations

10. The Tenant has experienced various challenges that led to and/or compounded their financial difficulties. They admitted their current income is insufficient to cover their necessary and fixed expenses including food and medication, as well as rent. In these circumstances, the Tenant admitted a further payment plan was not feasible.
11. The Landlord was concerned about ongoing financial prejudice and sought termination.

12. The Tenant's efforts to find alternative affordable accommodations have to date been unsuccessful. The Tenant submitted they may be able to stay with one of their parents. The Tenant has three minor children, 2 of whom have medical needs. The elder two of the Tenant's children attend the local school and the school year ends in June.
13. The Landlord was open to extending the termination date to the end of June if the Tenant was able to make a further payment of \$1,700.00 on or before May 23, 2023, with the intention of applying the last month's rent deposit to June 2023. The Tenant submitted this was feasible.
14. I considered all the circumstances in accordance with subsection 83(2) of the Act and determined it would not be unfair to postpone eviction until June 30, 2023, with enforcement available as of July 1, 2023, if the Tenant paid the Landlord \$1,700.00 on or before May 23, 2023. However, if this amount was not paid to the Landlord on or before May 23, 2023, it was determined eviction would not be postponed and the Landlord could seek enforcement with the Court Enforcement Office (Sheriff) on May 24, 2023.
15. By endorsement dated May 8, 2023, I directed the parties to write to my attention and advise whether the \$1,700.00 payment was made on time.
16. By email dated May 19, 2023, the Landlord's Representative confirmed the Tenant had paid the Landlord \$1,700.00 on May 19, 2023.
17. As a result, I find it would not be unfair to postpone the eviction until June 30, 2023, pursuant to subsection 83(1)(b) of the Act.

The rent deposit, interest, and daily compensation

18. The Landlord collected a rent deposit of \$2,300.00 from the Tenant and this deposit is still being held by the Landlord.
19. I find the daily compensation to which the Landlord is entitled will run from May 20, 2023, the day after the LTB was advised the Tenant had paid \$1,700.00 being the effective last day of hearing. The rate of daily compensation is \$78.44 per day calculated as follows:
 $\$2,385.79 \times 12$, divided by 365 days.
20. Similarly, I find interest on the rent deposit is owing to the Tenant for the period from December 20, 2020, to May 19, 2023.
21. I have applied the amount of the rent deposit and interest on the rent deposit to the amount the Tenant is required to pay.
22. Finally, as I have determined the Tenant may remain at the rental unit until the end of June 2023, I have started to run interest owing on any amounts outstanding from July 1, 2023 – the day following the date of termination.

It is ordered that:

1. Order LTB-L-055648-22 is cancelled.
2. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before June 30, 2023.
3. 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.
4. 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 June 30, 2023.
5. The Tenant shall pay to the Landlord \$8,065.14*. This amount represents the rent owing up to May 19, 2023, and the cost of filing the previous application, less the rent deposit and interest.
6. The Tenant shall also pay to the Landlord \$78.44 per day for compensation for the use of the unit starting May 20, 2023 to 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 30, 2023, the Tenant will start to owe interest. This will be a simple interest calculated from July 1, 2023, at 6.00% annually on the balance outstanding.

June 8, 2023

Date Issued

Rebecca Case

Vice Chair, 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.

* Refer to the attached Summary of Calculations.

Summary of Calculation

Amount the Tenant must pay the Landlord:

Reason for amount owing	Period	Amount
Amount owing from previous order	Up to October 31, 2022	\$3,468.80
New Arrears	February 1, 2023 to May 19, 2023	\$8,647.73
Less payment made May 19, 2023		-\$1,700.00
Less the rent deposit		-\$2,300.00
Less the interest owing on the rent deposit	December 20, 2020 to May 19, 2023	-\$51.39
Plus daily compensation owing for each day of occupation starting May 20, 2023		\$78.44 (per day)
Total the Tenant must pay the Landlord:		\$8,065.14 + \$78.44 per day starting May 20, 2023

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