



Order under Section 69 Residential Tenancies Act, 2006

Citation: Lake Promenade Apartments Limited v Miguel Holder, 2023 ONLTB 42132

Date: 2023-06-06

File Number: LTB-L-070473-22

In the matter of: 202, 240 LAKE PROMENADE, ETOBICOKE
ON M8W1B2

Between: Lake Promenade Apartments Limited Landlord

And

Miguel Holder Tenant

Lake Promenade Apartments Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Miguel Holder (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on May 9, 2023.

The Landlord's representative, Howard Levison 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 \$1,458.66. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$47.96. This amount is calculated as follows: \$1,458.66 x 12, divided by 365 days.
5. The Tenant has paid \$1,200.00 to the Landlord since the application was filed.
6. The rent arrears owing to May 31, 2023 are \$9,010.62. The Tenant did not dispute the arrears.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

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8. The Landlord collected a rent deposit of \$1,441.37 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.
9. Interest on the rent deposit, in the amount of \$33.86 is owing to the Tenant for the period from June 1, 2022 to May 9, 2023.

Relief from Eviction

10. 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 July 15, 2023 pursuant to subsection 83(1)(b) of the Act.
11. The Landlord's representative testified that they attempted to communicate with the Tenant regarding a repayment plan as recently as January 26, 2023. There was no response from the Tenant. I am satisfied the Landlord met their obligation to attempt to negotiate a repayment plan with the Tenant.
12. The Landlord sought an eviction order with eviction postponed to July 15, 2023 based on the Tenant's circumstances. The arrears were described as substantial with a few good faith payments made by the Tenant since the application was filed.
13. The Tenant wants to preserve her tenancy and avoid eviction. This has been a long tenancy which started in 2014. He has a wife and 4 children and the family has connections to the community.
14. The Tenant testified that he is self-employed businessperson that runs an event rental company. The business operations declined during COVID when events could not be held due to health restrictions. He had to downsize his business as such his income decreased and he was unable to pay the monthly rent. As of summer 2022, business has picked up and he will be able to make the monthly rent payments. The Tenant was not able to provide an amount for his monthly income as he testified that it was not a definite income. In addition, his wife is unemployed and the Universal Child Care Benefit is used to pay for the Tenant car payments.
15. When asked, the Tenant admitted his monthly income only covers his phone, internet, groceries and car payment. He did not include his monthly rent in his expenses and he also testified that he does not pay other debts such as child support and student loans. The Tenant testified that he would not be able to find a new place to rent if he were to be evicted.
16. I find it would be unfair to grant an indefinite time to find a new place as the Tenant requested. The Tenant's limited and unsubstantiated income from his business suggest there is not viable way for the Tenant to pay the rent or the arrears in a reasonable amount of time. There are substantial rent arrears owing with no realistic plan for how to pay it back. Therefore, I find there is no realistic way to impose a payment plan since there is no evidence supporting how any repayment plan could be satisfied.

17. I do however find that a delay to July 15, 2023 is fair in the circumstances, so the Tenant can arrange his affairs and move, or pay off the arrears and void the eviction order if he is able.

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:**
 - \$10,655.28 if the payment is made on or before June 30, 2023. See Schedule 1 for the calculation of the amount owing.
- OR**
- \$12,113.94 if the payment is made on or before July 15, 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 15, 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 15, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$6,694.37. 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 \$47.96 per day for the use of the unit starting May 10, 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 17, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 18, 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 15, 2023, then starting July 16, 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 16, 2023.

June 6, 2023
Date Issued

Camille Clyne
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 16, 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	\$11,669.28
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,200.00
Total the Tenant must pay to continue the tenancy	\$10,655.28

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before July 15, 2023

Rent Owing To July 31, 2023	\$13,127.94
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,200.00
Total the Tenant must pay to continue the tenancy	\$12,113.94

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

Rent Owing To Hearing Date	\$9,183.60
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,200.00
Less the amount of the last month's rent deposit	- \$1,441.37
Less the amount of the interest on the last month's rent deposit	- \$33.86
Total amount owing to the Landlord	\$6,694.37
Plus daily compensation owing for each day of occupation starting May 10, 2023	\$47.96 (per day)