



Order under Section 69 Residential Tenancies Act, 2006

Citation: Obbe Dejong v Doris Hall, 2023 ONLTB 42190

Date: 2023-06-05

File Number: LTB-L-059981-22

In the matter of: 313 ELGIN ST
SARNIA ON N7T5B5

Between: Obbe Dejong Landlord

And

Doris Hall Tenant

Obbe Dejong (the 'Landlord') applied for an order to terminate the tenancy and evict Doris Hall (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on May 25, 2023.

The Landlord, the Landlord's legal representative, Theodore Smith, and the Tenant attended the hearing.

Determinations:

Preliminary Issue

1. At the start of the hearing, the Tenant requested an adjournment and, for the following reasons, I denied the Tenant's request.
2. The Tenant says she is working with her local legal clinic and is filing two applications of her own. The Tenant says she needs an adjournment so she can raise her own issues and pursue a rent abatement from the Landlord.
3. Based on the Tenant's own testimony, she is working with a legal clinic and is in the process of filing her own applications. This means that she does not require an adjournment to address the issues outlined in the Landlord's application for non-payment of rent.
4. I would also note that the arrears in this matter are quite substantial and they continue to grow. This means that an adjournment would be highly prejudicial to the Landlord. For all of these reasons, I denied the Tenant's request for an adjournment.

The Application for Non-Payment of Rent

5. 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.

6. As of the hearing date, the Tenant was still in possession of the rental unit.
7. The lawful rent is \$1,922.80. It is due on the 1st day of each month.
8. Based on the Monthly rent, the daily rent/compensation is \$63.22. This amount is calculated as follows: $\$1,922.80 \times 12$, divided by 365 days.
9. Although the Landlord's update sheet only reflected one payment by the Tenant of \$1,922.80 on February 1, 2023, the parties agreed to amend the update sheet to include an additional payment of \$1,900.00 which was made in December 2022. This means, the Tenant has paid \$3,822.80 to the Landlord since the application was filed.
10. The rent arrears owing to May 31, 2023, are \$15,336.80.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. The Landlord collected a rent deposit of \$1,900.00 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.
13. Interest on the rent deposit, in the amount of \$45.70 is owing to the Tenant for the period from December 1, 2020, to May 25, 2023.
14. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'). In particular, I have considered that the Tenant lives alone in the rental unit, which is a 3-bedroom house. Although the Tenant originally lived with her spouse and three children in the rental unit, this is no longer the case. The Tenant's children are ages 14, 7 and 5 and she is working with social services to have the children come live with her on a permanent basis, although she does not have a precise date when this will happen.
15. The Tenant also says she has an adult son who is 26 years old who has significant physical and mental impairments due to a motor vehicle accident, but he is not living in the rental unit.
16. The Tenant says that she may be able to pay the outstanding arrears because she is a named plaintiff in a court action that involves her adult son's car accident and she expects to start receiving structured settlement payments from that court action beginning on June 26, 2023. The Tenant also expects to receive additional retroactive cheques that should begin on or before June 26, 2023. However, for the following reasons, I am not persuaded by the Tenant's testimony on this point.
17. First, the Tenant's testimony regarding the current status of the court action was vague and inconsistent. At first, she said she expects to receive structured settlement payments, but then later she said that she expects this matter to proceed to trial. These two statements are not compatible. If the parties to the court action did reach a settlement agreement that resulted in the payments the Tenant describes, there would be no need to proceed to a trial. The Tenant was also unable to provide any details regarding how much the payments would be, how frequent the payments would be or the total amount of the

alleged settlement. For all of these reasons, I do not find the Tenant to be credible when she says that she will begin receiving structured settlement payments on June 26, 2023, as well as additional retroactive payments.

18. I would also note that the Tenant failed to present any documentary evidence in support of her testimony. The Tenant failed to provide any court documents to establish that she is a named plaintiff in the court action and she failed to provide any settlement document to support her testimony that she expects to receive structured settlement payments beginning June 26, 2023, as well as additional retroactive payments. If the Tenant were to begin receiving these kinds of payments, the documents to support her testimony should have been easily obtainable. For example, the Tenant could have produced the alleged settlement agreement, a letter to confirm which lawyer she has retained, or even a redacted court document with monetary amounts to confirm exactly how much she expects to receive and when those payments will be made. In the absence of any documentary evidence to support any aspect of the Tenant's testimony, and in light of the Tenant's contradictory testimony on this point, I am not satisfied that the Tenant is involved in the court action she describes or that she will receive the payments she describes.
19. In the absence of the settlement payments the Tenant describes, there appears to be no dispute that the Tenant cannot afford the now substantial arrears and she cannot afford to pay the monthly rent as the Tenant's only monthly income is \$671.00 from social assistance. The Tenant also admits that she has outstanding arrears with the utility company in the amount of approximately \$6,000.00.
20. Based on the evidence before me, I am not satisfied that the Tenant can afford the monthly rent or the significant outstanding arrears. This means that this tenancy is no longer financially sustainable.
21. After considering all of the circumstances, I find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) 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:**
 - \$17,445.60 if the payment is made on or before June 16, 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 16, 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 16, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$13,234.80. 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 \$63.22 per day for the use of the unit starting May 26, 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 16, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 17, 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 16, 2023, then starting June 17, 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 June 17, 2023.

June 5, 2023
Date Issued

Laura Hartsliet
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 December 17, 2023 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 16, 2023

Rent Owing To June 30, 2023	\$21,082.40
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,822.80
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	\$17,445.60

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

Rent Owing To Hearing Date	\$18,817.30
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,822.80
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	- \$1,900.00
Less the amount of the interest on the last month's rent deposit	- \$45.70
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	\$13,234.80
Plus daily compensation owing for each day of occupation starting May 26, 2023	\$63.22 (per day)