



Order under Section 69 Residential Tenancies Act, 2006

Citation: Caprice Barre v Christine Lewis, 2023 ONLTB 41362

Date: 2023-06-02

File Number: LTB-L-008329-23

In the matter of: 916 LEONARD AVE
CORNWALL ON K6J1L6

Between: Caprice Barre Landlord

And

Christine Lewis Tenant

Caprice Barre (the 'Landlord') applied for an order to terminate the tenancy and evict Christine Lewis (the 'Tenant') because the Tenant failed to meet a condition specified in the order issued by the Board with respect to application LTB-L-009254-22.

The hearing of this application was previously scheduled on April 19, 2023 but was adjourned due to technical reasons and possible service issues of the notice of hearing. On April 19, 2023 at 10:56 a.m., the Tenant contacted the Board advising she was not able to access the videoconference. The Tenant was advised the hearing would commence at 1:00 p.m. and she could sign in at that time. The Tenant did not appear at the hearing at the scheduled time.

A new hearing was held to consider this application.

This application was heard by videoconference on May 17, 2023.

The Landlord, the Landlord's Agent Alain Billard, and the Landlord's Legal Representative, James Moak, attended the hearing.

As of 1:43 p.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. The order provides that the Landlord can apply to the Board 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 certain conditions in the order. This application was filed within 30 days of the breach.
2. The Landlord's Legal Representative submitted that the L4 application was originally filed with the Board on September 7, 2022 however the application was not actioned by the Board. This original application alleged that the Tenant did not pay the lawful monthly rent that became due on September 1, 2022. As a result, the Landlord filed a new L4 application which is the subject of this hearing.
3. The Landlord's Legal Representative submitted that the Tenant has not met any of the conditions as set out in order LTB-L-009254-22 which are as follows:
 - a) Starting September 1, 2022 and continuing on the first day of each month thereafter to August 1, 2023 the Tenant shall pay \$1,150.00 to the Landlord towards the rent owing for each of these months.
 - b) Starting September 21, 2022 and continuing on the 21st day of each month thereafter to July 21, 2023 the Tenant shall pay \$845.00 to the Landlord towards the rent owing for each of these months.
 - c) Starting September 21, 2022 and continuing on the 21st day of each month thereafter to July 21, 2023 the Tenant shall pay \$450.00 to the Landlord towards the arrears of rent.
 - d) On or before August 21, 2023, the Tenant shall pay \$845.00 to the Landlord towards the rent for August 2023.
 - e) On or before August 21, 2023, the Tenant shall pay \$451.00 to the Landlord towards the arrears of rent.

The breach

4. Based on the evidence before me and on a balance of probabilities, I find that the Tenant has not met any of the conditions and that the Landlord filed the application within 30 days of the breach.

Arrears owing

5. 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 dates due. Accordingly, in addition to eviction, the Landlord is entitled to request an order for the payment of arrears owing.

6. The Tenant was ordered to pay \$5,401.00 for rent arrears and the application filing fee in the previous order. The amount this is still owing from that order is \$5,401.00 and that amount is included in this order. This order replaces order LTB-L-009254-22.
7. Since the date of the previous order, the Tenant has failed to pay the full rent that became owing for the period from September 1, 2022 to May 17, 2023.

The rent deposit

8. The Landlord collected a rent deposit of \$1,995.00 from the Tenant and this deposit is still being held by the Landlord.
9. Interest on the rent deposit, in the amount of \$46.90 is owing to the Tenant for the period from December 1, 2021 to May 17, 2023.
10. The amount of the rent deposit and interest on the rent deposit is applied to the amount the Tenant is required to pay.

Daily compensation

11. The Landlord is entitled to daily compensation from May 18, 2023 until the date the Tenant moves out of the rental unit at a daily rate of \$65.59.
12. As of the hearing date, the Tenant was still in possession of the rental unit. This amount is calculated as follows: \$1,995.00 x 12, divided by 365 days.

Section 83 considerations

13. The Landlord's Legal Representative submitted that the Landlord is unaware of any circumstances of the Tenant that would cause the termination of the tenancy to be delayed or denied. Since the Tenant did not attend the hearing to give evidence of their circumstances, I am unable to determine if any relief from eviction should be considered.
14. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

1. Order LTB-L-009254-22 is cancelled.
2. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
3. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**

- \$25,351.00 if the payment is made on or before June 13, 2023. See Schedule 1 for the calculation of the amount owing.
- 4. 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 13, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
- 5. **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 13, 2023**
- 6. The Tenant shall also pay the Landlord compensation of \$65.59 per day for the use of the unit starting May 18, 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 13, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 14, 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 13, 2023, then starting June 14, 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 14, 2023.

2023 ONLTB 41362 (CanLII)

June 2, 2023

Date Issued

Susan Priest

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 14, 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 13, 2023

Rent Owing To June 30, 2023	\$25,165.00
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
Total the Tenant must pay to continue the tenancy	\$25,351.00

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

Rent Owing To Hearing Date	\$22,202.56
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	- \$1,995.00
Less the amount of the interest on the last month's rent deposit	- \$46.90
Total amount owing to the Landlord	\$20,346.66
Plus daily compensation owing for each day of occupation starting May 18, 2023	\$65.59 (per day)