



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

Citation: Diego Natale v Brandon Gill, 2023 ONLTB 39092

Date: 2023-06-02

File Number: LTB-L-000640-23

In the matter of: 1, 78 JOSEPH ST
KINGSTON ON K7K2H7

Between: Diego Natale Landlord

and

Brandon Gill Tenant

Diego Natale (the 'Landlord') applied for an order to terminate the tenancy and evict Brandon Gill (the 'Tenant') 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 4, 2022 with respect to application LTB-L-019070-22.

By endorsement dated April 4, 2023, this application was directed to hearing as there were two tenants identified on order LTB-L-019070-22, issued November 4, 2022, and only one on the application.

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

The Landlord's Legal Representative, Jesse Valkenier, and the Landlord attended the hearing. As of 1:28 p.m. the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB.

Determinations:

1. Order LTB-L-019070-22 issued November 4, 2022 (the 'Order'), was with respect to the Tenant and Emily Sauve.
2. The Order provides the Tenant and Ms. Sauve were to pay \$7,863.00 for arrears and costs up to October 31, 2022, with \$2,147.00 to be paid on or before November 1, 2022, \$491.00 to be paid on or before December 1, 2022, and \$475.00 to be paid on the 1st of each month commencing January 1, 2023 until the arrears were paid in full. In addition, they were to pay the rent in full and on time on the 1st of each month while the arrears are outstanding.

3. 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 terminate the tenancy and evict the Tenant and Ms. Suave if they do not meet certain conditions in the order.
4. On this application, the Landlord wished to proceed for an order for eviction, termination of tenancy, and arrears solely against the Tenant.
5. The Landlord testified he was advised Ms. Sauve moved out of the rental unit on or about December 2021. Nonetheless, at the hearing where the Order was entered into on consent the Tenant represented he was present on behalf of both himself and Ms. Sauve.
6. As the only evidence before me was that Ms. Sauve was not in possession of the rental unit on the date the within application was filed, I determined it was appropriate to proceed solely against the Tenant.
7. Based on the uncontested evidence of the Landlord's Representative, I find the Tenant has not met the following conditions specified in the Order:
 - a. The Tenant did not pay the Landlord \$475.00 towards arrears on or before January 1, 2023; and
 - b. The Tenant did not pay the Landlord rent on or before January 1, 2023.
8. This application was filed on January 4, 2023 and was therefore filed in time as it was filed within 30 days of the above breaches.
9. 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.
10. Since November 1, 2022, the Tenant paid \$4,344.00. This was for the two payments due on November 1, 2022 and December 1, 2022 and rent for November and December 2022.
11. The amount that is still owing for prior arrears and costs from the Order to the date of the hearing is \$5,225.00.
12. The Tenant has failed to pay rent that became owing for the period from January 1, 2023 to May 3, 2023.
13. The lawful rent increased on February 1, 2023 to \$874.32.
14. As a result, the amount outstanding to May 31, 2023, including new rent that has come due and the remaining arrears and costs from the Order is \$9,575.28.

Section 83 considerations

15. The Landlord's Representative submitted they have repeatedly reached out to the Tenant since he stopped paying in January and the sole response has been the Landlord should proceed before the Board.
16. The Landlord testified the Tenant has harassed him and that police were called on one occasion.
17. As the Tenant did not attend, no other circumstances were presented to me.

18. Having considered all of the above disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), I find it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

Last month rent's deposit, interest, and daily compensation

19. The Landlord collected a rent deposit of \$825.00 from the Tenant and this deposit is still being held by the Landlord.

20. Interest on the rent deposit is owing to the Tenant for the period from December 1, 2019, to May 3, 2023 in the amount of \$36.76.

21. The amount of the rent deposit and interest on the rent deposit is applied to the amount the Tenant is required to pay.

22. Based on the monthly rent, the daily rent/compensation is \$28.74. This amount is calculated as follows: $\$874.32 \times 12$, divided by 365 days.

It is ordered that:

1. Order LTB-L-019070-22 issued November 4, 2022, 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 13, 2023.
3. 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.
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 14, 2023.
5. The Tenant shall pay to the Landlord \$7,925.42*. This amount represents the rent owing up to May 3, 2023 and the cost of filing the previous application, less the rent deposit and interest the Landlord owes on the rent deposit.
6. The Tenant shall also pay to the Landlord \$28.74 per day for compensation for the use of the unit starting May 4, 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 13, 2023, the Tenant will start to owe interest. This will be a simple interest calculated from June 14, 2023 at 6.00% annually on the balance outstanding.

June 2, 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 December 13, 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.

* 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	\$5,225.00
New Arrears	January 1, 2023 to May 3, 2023	\$3,562.18
New NSF cheque charges and related administration charges		\$0.00
Less the rent deposit:		-\$825.00
Less the interest owing on the rent deposit	January 12, 2019 to May 3, 2023	-\$36.76
Plus daily compensation owing for each day of occupation starting May 4, 2023		\$28.74 (per day)
Total the Tenant must pay the Landlord:		\$7,925.42 + \$28.74 per day starting May 4, 2023

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