



Order under Section 69 Residential Tenancies Act, 2006

Citation: Ninan v Wilson, 2023 ONLTB 40514

Date: 2023-05-31

File Number: LTB-L-046333-22

In the matter of: UNIT B, 224 PARK AVE
BRANTFORD ON N3S5K2

Between: Bijo Ninan Landlord

And

James anthony Wilson Tenant

Bijo Ninan (the 'Landlord') applied for an order to terminate the tenancy and evict James anthony Wilson (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 14, 2023.

This application was heard by videoconference on March 14, 2023. The Tenant attended the hearing. The Landlord was represented at the hearing by Bijo Ninan.

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 \$1,000.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$32.88. This amount is calculated as follows: \$1,000.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to March 31, 2023, are \$10,000.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.

Rent Arrears

9. The Tenant disputes that he is in arrears. The Tenant believes the lawful rent is only \$750.00. He believes this to be the case because he had agreement to deduct \$250.00 per month for maintenance he performed at the rental unit. The Tenant then stated he paid the remaining rent in cash.
10. In *Mauti v. Gibbs, 2019 ONSC 3355*) para 27 the Divisional Court stated:

While the ultimate persuasive burden never shifts, once a landlord denies receiving funds, the tenant will have an evidentiary burden or a chance to advance some evidence to positively prove that he or she paid rent....

But it is an evidentiary burden or opportunity to respond. The legal burden of proof is always on the landlord to prove her case. If the tenant does not adduce evidence to counter or overcome the landlord's evidence, the landlord may not be found to have met her burden to prove the arrears on a balance of probabilities.

11. This means it is the Tenant's burden to show that the rent arrears have been paid. The Tenant has not done so in this case. Even if the Tenant paid rent in cash, it would be reasonable to expect he would have a receipt for payment. No receipts were provided to the Board. Further, the Tenant said there was a person, named Gina, that witnessed him pay cash every month. If this were the case, it would be expected that Gina would be at the hearing as a witness for the Tenant.
12. Based on the foregoing, I do not accept the Tenant's submission that he paid his rent in cash every month. Further, I do not accept the Tenant's evidence that there was an agreement to lower the rent for services performed around the rental unit. There was no agreement provided in this regard, and the Tenant's testimony lacked specifics to convince me this was the case.
13. For the above reasons, I find the rent arrears to the date of the hearing are \$10,000.00

Relief from Eviction

14. According to s. 83 of the *Residential Tenancies Act, 2006* (the 'Act') when the Board hears an application for an order evicting a tenant, the Board must consider whether there are any circumstances that support granting relief from eviction.
15. The Tenant does not want to stay in the unit. He needs two months to find a new place live. I find this to be reasonable, given the circumstances.
16. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, and find that it would not be unfair to postpone the eviction until August 31, 2023, pursuant to subsection 83(1)(b) 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:**
- \$12,186.00 if the payment is made on or before May 31, 2023. See Schedule 1 for the calculation of the amount owing.
- OR**
- \$13,186.00 if the payment is made on or before June 30, 2023. See Schedule 1 for the calculation of the amount owing.
- OR**
- \$14,186.00 if the payment is made on or before July 31, 2023. See Schedule 1 for the calculation of the amount owing.
- OR**
- \$15,186.00 if the payment is made on or before August 30, 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 August 30, 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 August 30, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$9,646.32. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$32.88 per day for the use of the unit starting March 15, 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 11, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 12, 2023, at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before August 30, 2023, then starting August 31, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. 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 August 31, 2023.

May 31, 2023
Date Issued

Bryan Delorenzi
 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 February 29, 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 May 31, 2023

Rent Owing To May 31, 2023	\$12,000.00
Application Filing Fee	\$186.00
Total the Tenant must pay to continue the tenancy	\$12,186.00

B. 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	\$13,000.00
Application Filing Fee	\$186.00
Total the Tenant must pay to continue the tenancy	\$13,186.00

C. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before July 31, 2023

Rent Owing To July 31, 2023	\$14,000.00
Application Filing Fee	\$186.00
Total the Tenant must pay to continue the tenancy	\$14,186.00

D. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before August 30, 2023

Rent Owing To August 31, 2023	\$15,000.00
Application Filing Fee	\$186.00
Total the Tenant must pay to continue the tenancy	\$15,186.00

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

Rent Owing To Hearing Date	\$9,460.32
Application Filing Fee	\$186.00
Total amount owing to the Landlord	\$10,646.32
Plus daily compensation owing for each day of occupation starting March 15, 2023	\$32.88 (per day)