



Order under Section 69 Residential Tenancies Act, 2006

Citation: Leslie Apartments Ltd v Sylvestre, 2023 ONLTB 40393

Date: 2023-05-31

File Number: LTB-L-072685-22

In the matter of: 102, 1 LESLIE ST
BRAMPTON ON L6X2J2

Between: Leslie Apartments Ltd Landlord

and

Reena Sylvestre Tenant

Leslie Apartments Ltd (the 'Landlord') applied for an order to terminate the tenancy and evict Reena Sylvestre (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on May 11, 2023.

The Landlord's Agent, Greg Riedstra, and the Tenant attended the hearing. The Tenant spoke with Duty Counsel prior to the start of the proceeding.

Determinations:

Preliminary Issue

1. The Tenant submitted the inclusion of the amount she pays each month for parking in her rent in the Notice to End Tenancy Early for Non-payment of Rent (N4 Notice) was improper.
2. The Tenant admitted she and the Landlord agreed she would pay \$75.00 every month for the use of a parking spot starting in July 2022 and that this agreement has not changed since that time.
3. Under the *Residential Tenancies Act, 2006* (the 'Act'), rent is defined as:

“rent” includes the amount of any consideration paid or given or required to be paid or given by or on behalf of a tenant to a landlord or the landlord’s agent for the right to occupy a rental unit and for any services and facilities and any privilege, accommodation or thing that the landlord provides for the tenant in respect of the occupancy of the rental unit, whether or not a separate charge is made for services and facilities or for the privilege, accommodation or thing, but “rent” does not include,

- (a) an amount paid by a tenant to a landlord to reimburse the landlord for property taxes paid by the landlord with respect to a mobile home or a land lease home owned by a tenant, or
- (b) an amount that a landlord charges a tenant of a rental unit in a care home for care services or meals; (“loyer”)

[Emphasis added]

4. Services and facilities are also defined under the Act as:

“services and facilities” includes,

...

- (b) parking and related facilities, ...

5. I therefore found the Tenant’s regular fee for a parking spot is included in the definition of rent and was properly included on the N4 Notice. The Tenant’s preliminary issue was dismissed.

L1 Application

- 6. The Landlord served the Tenant with a valid 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.
- 7. As of the hearing date, the Tenant was still in possession of the rental unit.
- 8. The lawful rent is \$1,715.00. It is due on the 1st day of each month.
- 9. Based on the Monthly rent, the daily rent/compensation is \$56.38. This amount is calculated as follows: \$1,715.00 x 12, divided by 365 days.
- 10. The Tenant has not made any payments since the application was filed.
- 11. Following the above ruling, the Tenant admitted the rent arrears owing to May 31, 2023, are \$11,585.00.
- 12. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

13. The Landlord collected a rent deposit of \$1,675.00 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.
14. Interest on the rent deposit, in the amount of \$53.35 is owing to the Tenant for the period from February 1, 2022 to May 11, 2023.

Section 83 Considerations

15. The Landlord sought a standard order due to the arrears. The Landlord's Agent testified to multiple efforts to work with the Tenant and the Tenant admitted he has reached out to make payment arrangements.
16. The Tenant testified she has experienced financial difficulties including losing her job shortly after the tenancy commenced. She testified she was able to obtain one time assistance from Peel Housing for a few months and that it also took some time for her to receive employment insurance. She further testified she explained to the Landlord that she was trying to find employment in November.
17. The Tenant testified she has been employed with a probationary status since March 9, 2023, and has been hesitant to make any arrangement with the Landlord until she is certain her employment will be permanent.
18. The Tenant admitted she not made any payments towards arrears or rent since November 2022 and testified she has been trying to catch up with the minimum bills she has.
19. The Tenant testified her monthly expenses, not including rent, total approximately \$2,500.00. The Tenant's monthly income is approximately \$2,880.00 before taxes. Even if the Tenant's employment is made permanent and she receives the anticipated increase in pay her income will continue to be less than her expenses and rent.
20. The Tenant submitted she has reached out for assistance from her church with respect to her arrears but is still awaiting a response, and in any event, this does not address the ongoing monthly shortfall.
21. The Tenant testified she does not have family or friends with whom she can stay. She has looked for an affordable place and roommate without success. As a result, the Tenant testified it would take her more than a month to find a place to live.
22. The Landlord submitted the Tenant has been aware of the issues since last fall and that the Tenant's non-payment of rent has caused some financial hardship on the budget for the Landlord – which is a closely held family business.
23. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'). As this order is issuing on May 31, 2023, the Tenant has effectively already had an additional three weeks since the hearing. In the above circumstances, I find that it would not be unfair to postpone the eviction until June 30, 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:**
 - \$11,771.00 if the payment is made on or before May 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$13,486.00 if the payment is made on or before June 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 June 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 June 30, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$8,947.83. 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 \$56.38 per day for the use of the unit starting May 12, 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. 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 30, 2023, then starting July 1, 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 1, 2023.

May 31, 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 January 1, 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 | \$11,585.00 |
| 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 | \$11,771.00 |

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 | \$13,300.00 |
| 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 | \$13,486.00 |

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

| | |
|----------------------------|-------------|
| Rent Owing To Hearing Date | \$10,490.18 |
| 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 | - \$1,675.00 |
| Less the amount of the interest on the last month's rent deposit | - \$53.35 |
| Total amount owing to the Landlord | \$8,947.83 |
| Plus daily compensation owing for each day of occupation starting May 12, 2023 | \$56.38 (per day) |