



Order under Subsection 87(1) Residential Tenancies Act, 2006

Citation: Daniele Pantanella v Kimberley Barclay, 2023 ONLTB 37150

Date: 2023-05-26

File Number: LTB-L-012400-23

In the matter of: Upper Unit, 41 DESCHENE AVE HAMILTON
ON L9A3J8

Between: Daniele Pantanella Landlord

And

Kimberley Barclay Tenant

Daniele Pantanella (the 'Landlord') applied for an order requiring Kimberley Barclay (the 'Tenant') to pay the rent that the Tenant owes.

This application was heard by videoconference on April 12, 2023.

The Landlord, the Landlord's legal representative, Paul Startek ('PS'), and the Tenant attended the hearing.

Preliminary issue:

1. The Tenant requested an adjournment at the outset of the hearing. She stated that she only received notice of hearing in an email from PS on April 5, 2023. The Tenant stated that she wanted to raise issues under section 82 of the Residential Tenancies Act, 2006 (the 'Act'), and sought the adjournment so that she could have more time to prepare to do so and to seek legal advice. She stated that she was advised by duty counsel at a previous appearance at the LTB on a different application that she would be able to raise such issues in response to the Landlord's rent arrears application.
2. The LTB's records indicate that a copy of the notice of hearing was mailed to the Tenant by the LTB on March 9, 2023. The Tenant stated that she had moved and did not receive the notice of hearing by mail from the LTB. At the time of hearing, there was no record of the mail being returned, however after the hearing, a copy of the returned mail was added to the LTB's file. However, I accepted the Tenant's evidence at the hearing that she had not received the notice of hearing from the LTB, so the returned mail being in the LTB's file is not material to my decision on the adjournment.

3. The Landlord opposed the adjournment request. PS stated that after filing this application on January 4, 2023, a copy of it was included in a document brief given to the Tenant with respect to a separate application the Landlord had filed in LTB-L-024536-22 (the 'L2 Application'). PS stated that, therefore the Tenant would have known about this application since January 4, 2023. This assertion is supported by the Tenant's evidence that duty counsel had previously told her she should raise issues under section 82 of the Act in response to this application.
4. PS stated that the Tenant ought to have done her due diligence with respect to this application beginning at that time. As described below, the L2 Application resulted in a consent order requiring the Tenant to vacate the rental unit by February 15, 2023. Knowing she would be moving, PS submitted that the Tenant ought to have ensured her mail would be forwarded, and could have also contacted the LTB about this application. PS also stated that after he sent the Tenant the notice of hearing and disclosure for today's hearing on April 5, 2023, the Tenant did not advise the Landlord or PS that she would seek an adjournment or that she intended to raise section 82 issues.
5. PS also stated that the parties had already agreed as to the quantum of rent arrears owing. The Tenant confirmed this.
6. I denied the adjournment request for the following reasons:
 - a. The Tenant was aware of this application before receiving the notice of hearing, and had spoken with duty counsel previously about raising issues under section 82 in advance of the hearing. The Tenant was free to prepare her evidence and submissions relative to these issues at any time, even before receiving a notice of hearing. I also agree with PS that, knowing she would be moving and that this application had been filed, it would have been prudent for the Tenant to either ensure her mail would be forwarded, or to contact the LTB about this application to ensure future LTB communications would reach her;
 - b. the Tenant was free to seek further legal advice about this application at any time, and did speak with duty counsel before the hearing;
 - c. the Tenant confirmed that she vacated the rental unit on February 15, 2023, so any maintenance issues are not ongoing as they pertain to this tenancy; and
 - d. any prejudice to the Tenant caused by moving forward with this hearing is minimal, both because there is no dispute about the quantum of rent arrears owed, and it does not preclude the Tenant from filing a tenant application to seek any remedy she believes she is entitled to under the Act.
7. Having considered the issues above, and in accordance with the LTB's mandate to adopt the most expeditious method of determining the questions arising in a proceeding that provides those directly affected by the proceeding an adequate opportunity to know the issues and to be heard, I denied the adjournment request and the application was heard.

Determinations:

8. The Tenant did not pay the total rent they were required to pay for the period from December 1, 2022 to February 15, 2023.

9. The lawful rent is \$1,619.20. It was due on the 1st day of each month.
10. The Tenant has not made any payments since the application was filed.
11. The tenancy ended on February 15, 2023 as a result of the Tenant moving out in accordance with an LTB order terminating the tenancy on consent of the parties in LTB-L-024536-22 (the 'L2 Application'). Therefore, the Tenant's obligation to pay rent also ended on that date.
12. The parties agreed that the rent arrears and daily compensation owing to February 15, 2023 are \$4,036.85.
13. The Landlord collected a rent deposit of \$1,600 from the Tenant and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy is terminated.
14. Interest on the rent deposit, in the amount of \$24.24 is owing to the Tenant for the period from January 1, 2022 to February 15, 2023.
15. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
16. The Landlord initially sought an order requiring payment of the rent arrears and costs of filing the application, less the rent deposit and interest owing on it, with interest accruing if it is not paid by 11 days after issuance of this order.
17. The Tenant stated that she is not currently employed and cannot presently pay the rent arrears. She asked that interest not accrue on the amount outstanding for 90 days, and for a payment plan to begin after that date. The Tenant was not able to propose a specific payment plan because she is not presently employed. PS then stated the Landlord would be agreeable to an order deferring the accrual of interest for 90 days.
18. I do not find that it is practical to order a payment plan on an order for rent arrears only, but it is reasonable to defer the accrual of interest for 90 days in the circumstances, as requested by the Tenant.

It is ordered that:

1. The Tenant shall pay to the Landlord \$2,613.61. This amount includes rent arrears owing up to February 15, 2023 and the cost of the application minus the rent deposit and interest owing.
2. If the Tenant does not pay the Landlord the full amount owing on or before August 24, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 25, 2023 at 6.00% annually on the balance outstanding.

May 26, 2023

Date Issued

Mark Melchers

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.