



Order under Section 69 Residential Tenancies Act, 2006

Citation: Serguienko v Jankielsztajn, 2023 ONLTB 38448

Date: 2023-05-18

File Number: LTB-L-015387-23

In the matter of: Upper unit, 127 IVY CRES OTTAWA
ON K1M1X7

Between: Oxana Serguienko Landlord

And

Robert Jankielsztajn Tenant

Oxana Serguienko (the 'Landlord') applied for an order to terminate the tenancy and evict Robert Jankielsztajn (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (L1 application).

The Landlord also applied for an order to terminate the tenancy and evict the Tenant because: the Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex; the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex used the rental unit or the residential complex in a manner that is inconsistent with use as a residential premises and that has caused or can be expected to cause significant damage; and the Tenant, another occupant of the rental unit or someone the Tenant permitted in the building has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord in a building that has three or fewer residential units and the Landlord resides in the building (L2 application).

This application was heard by videoconference on May 10, 2023.

The Landlord and the Landlord's Legal Representative, Evgeny Aptekar, attended the hearing.

As of 2:09 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:

The Landlord's L1 Application

1. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Nonpayment 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 \$795.00. It is due on the 10th day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$26.14. This amount is calculated as follows: \$795.00 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 June 9, 2023, are \$4,210.26.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$795.00 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.
9. Interest on the rent deposit, in the amount of \$11.38 is owing to the Tenant for the period from October 14, 2022 to May 10, 2023.

The Landlord 's L2 Application

N7 Notice of Termination

10. The Tenant occupies a bachelor unit on the upper floor of the house where the Landlord lives with her family.
11. On January 30, 2023, the Landlord gave the Tenant an N7 notice of termination. The notice of termination contains 14 separate allegations between December 5, 2022 and January 27, 2023 of loud noises, arguments, late night parties, weird nightly activities which include multiple heavy items being brought in and moved around the rental unit making noise well after 11:00 p.m., blocking the Landlord's car in the parking lot, and constant visitors at all hours of the night. These activities occur on a regular basis.
12. The N7 notice also contained an incident in which the police were involved on January 25, 2023. After an inspection of the rental unit, the Landlord discovered that the fire alarm was disconnected and taken out, the entry lock was ripped out of the rental unit door allowing anyone to enter, the doorbell was removed, some of the furniture that was provided by the Landlord was damaged, and inside the closet an extra sleeping place was discovered as extension wires had been stretched there which is a major safety issue. There were also narcotic substances discovered on the top of a plastic box next to the bed. The Landlord contacted the Ottawa Police and a report was filed.

13. The Landlord and her family are afraid of the Tenant and what the Tenant and his friends might do at any time. The inconsistent use of the unit, the fire safety and electrical issues as well as the constant late-night behaviours of the Tenant pose a major potential health and safety risk to the Landlord and her family.
14. The Landlord's Legal Representative asked the Board for an eviction due to both the L1 application for unpaid rent as well as the L2 application for substantial interference, inconsistent use and the health and safety risk to the Landlord and her family.

Relief from eviction

15. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (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. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before **May 29, 2023**.
2. The Tenant shall pay to the Landlord **\$2,805.68**. 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.
3. The Tenant shall also pay the Landlord compensation of **\$26.14** per day for the use of the unit starting May 11, 2023, until the date the Tenant moves out of the unit.
4. If the Tenant does not pay the Landlord the full amount owing on or before May 29, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 30, 2023, at 6.00% annually on the balance outstanding.
5. If the unit is not vacated on or before May 29, 2023, then starting May 30, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. 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 May 30, 2023.

May 18, 2023

Date Issued

Michael Di Salle

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 November 30, 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 as the tenancy is terminated

Rent Owing To Hearing Date	\$3,426.06
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	- \$795.00
Less the amount of the interest on the last month's rent deposit	- \$11.38
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$2,805.68
Plus daily compensation owing for each day of occupation starting May 11, 2023	\$26.14 (per day)

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