



Order under Section 69 Residential Tenancies Act, 2006

Citation: 626115 ONTARIO LTD v Henrietta Ruszo, 2023 ONLTB 35908

Date: 2023-05-12

File Number: LTB-L-063500-22

In the matter of: 3A, 30 COVINGTON RD
NORTH YORK ON M6A1G1

Between: 626115 ONTARIO LTD Landlord

And

Henrietta Ruszo and Ronald Babos Tenant

626115 ONTARIO LTD (the 'Landlord') applied for an order to terminate the tenancy and evict Henrietta Ruszo and Ronald Babos (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on April 26, 2023.

The Landlord's agent, Alexander Leo, attended the hearing.

The Tenants attended the hearing.

Determinations:

Preliminary: Tenants Requested Adjournment

1. The Tenants requested an adjournment and submitted 2 reasons for the adjournment:
 - i. The Tenants went to a legal clinic in December 2022 after receiving the Landlord's N4 notice. The Tenants received the notice of hearing approximately 2 weeks before the hearing. The Tenants did not hear back from the legal clinic in that time and submitted they needed legal representation in order to proceed as they had section 82 issues to raise.

- ii. The Tenants disputed the arrears and needed time to gather their information regarding the amount they believe they owed.

The Board's Guidelines for Adjournment Requests

1. The Guideline in part states:

Where the Member is satisfied that the party has received sufficient notice of the hearing and has been provided with an adequate opportunity to prepare their evidence and submissions, summons witnesses and obtain counsel ahead of the hearing date, an adjournment is not usually granted unless there are exceptional circumstances.

The specific factors the Member may consider in deciding whether to grant an adjournment include:

- 1) the reason for the adjournment and position of the parties;
- 2) the issues in the application;
- 3) any prejudice that may result from granting or denying the request;
- 4) the history of the proceeding including other adjournments or rescheduling;
- 5) the LTB's obligation to adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and be heard on the matter.

Adjournment to Allow Representation

Section 10 of the SPPA states that a party may be represented by a representative at a hearing. However, **the right to representation is not absolute and an adjournment is not automatically granted when it is requested on this ground.** The onus is on the party wishing to be represented to make all reasonable efforts to find a lawyer or paralegal able to represent them at the hearing once they become aware of the hearing date.

[Emphasis added.]

2. Based on the submissions from the Tenants, I denied the Tenants request for an adjournment, with respect to the Board's Guidelines for the following reasons:
3. In my opinion, the Tenants had been given sufficient notice of hearing having had 2 weeks to prepare for the hearing to discuss the arrears. The Tenants provided vague details about why they were unable to obtain representation in the 2 weeks prior to the hearing.

The Tenants claim they did not hear back from the legal clinic but made no attempt to contact the legal clinic until the day before the hearing.

4. The arrears the Landlord is claiming are substantial, and an adjournment would further prejudice the Landlord, as the Tenants testified they were withholding rent due to section 82 issues. An adjournment would allow the Tenants to continue to withhold rent and further prejudice the Landlord by incurring more arrears.
5. Adjourning the hearing would not be the most expeditious method of dealing with the Landlord's application. The parties were both present and while the Tenants' disputed the arrears, their submissions could be provided in order to determine the amount in dispute.
6. With respect to the Tenants desire to have representation in order to present section 82 issues, the Tenants were made aware of the option for them to file their own application with the Board, and the applications could be heard independently.

Landlord's L1 Application

7. 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.
8. As of the hearing date, the Tenant was still in possession of the rental unit.
9. The lawful rent is \$1,535.20. It is due on the 1st day of each month.
10. Based on the Monthly rent, the daily rent/compensation is \$50.47. This amount is calculated as follows: $\$1,535.20 \times 12$, divided by 365 days.
11. The Tenant has not made any payments since the application was filed.
12. The rent arrears owing to April 30, 2023 are \$10,596.64.
13. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
14. The Landlord collected a rent deposit of \$1,535.20 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.
15. Interest on the rent deposit, in the amount of \$8.94 is owing to the Tenant for the period from February 1, 2023 to April 26, 2023.
16. The position of the Landlord is the Tenant's have not paid any rent or amount towards the arrears since the application was filed with the Board. The arrears continue to grow, and

the Landlord submitted that in several talks with the Tenants they claim they want to live rent free for one year.

17. The Landlord is seeking a standard order for arrears and eviction.
18. The position of the Tenants is they disputed the arrears and submitted they did not owe that much.
19. In order to determine the correct amount of arrears being claimed by the Landlord I reviewed the Landlord's N4 notice, the application and the L1 / L9 Update sheet with the Tenants by sharing on my Zoom screen.
20. After reviewing the arrears in the Landlord's paperwork the tenants made a new submission and did not dispute the arrears. The discrepancy in the amount the landlord was claiming and what the tenants felt that they owed in arrears was with respect to the last months rent and how it would be applied to the order.
21. Once the arrears had been established and there was no dispute between the parties, the Tenants submitted that they had intention to move out of the rental unit and had already applied to other rental units. The Tenants intended to have new housing arrangements within a couple of weeks.
22. With the submission for the Tenants that they intended to move out of the rental unit, I inquired with the Landlord to see if the Landlord would be seeking a non-voidable order for termination.
23. I explained to both parties the terms of such an order.
24. The Landlord denied the option for a non-voidable order and restated he was looing for a standard order.

Section 83, Relief From Eviction

25. The tenants made a request to the board for three weeks in order to finalize their applications for other housing. This time would allow them to move out of the rental unit and into their new housing.
26. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Residential Tenancies Act, 2006 (the 'Act'), including the impact of COVID-19 on the parties. Given the quantum of arrears, the fact no payments have been made since the application was filed with the Board, and the submission from the Tenants they are withholding rent, I am granting the Landlord's request for a standard order for eviction and arrears. The Tenants submitted that they do not have young children or any persons with special needs that the Board needs to consider living with them, and I find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

27. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
28. This order contains all reasons for the determinations and order made. No further reasons will be issued.

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:
 - \$12,317.84 if the payment is made on or before May 23, 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 May 23, 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 May 23, 2023
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$9,015.52. 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 \$50.47 per day for the use of the unit starting April 27, 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 May 23, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 24, 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 May 23, 2023, then starting May 24, 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 May 24, 2023.

May 12, 2023

Date Issued

 Greg Brocanier

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 24, 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.

*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

**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 23, 2023

Rent Owing To May 31, 2023	\$12,131.84
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 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 the Tenant must pay to continue the tenancy	\$12,317.84

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

Rent Owing To Hearing Date	\$10,373.66
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	- \$1,535.20
Less the amount of the interest on the last month's rent deposit	- \$8.94
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	\$9,015.52
Plus daily compensation owing for each day of occupation starting April 27, 2023	\$50.47 (per day)