



Order under Section 69 Residential Tenancies Act, 2006

Citation: J. Levien c/o Portsmouth Residential Inc. v Derek Hill, 2023 ONLTB 33799

Date: 2023-05-10

File Number: LTB-L-025646-22

In the matter of: 47 SAINT PAUL ST
BROCKVILLE ON K6V5B8

Between: J. Levien c/o Portsmouth Residential Inc. Landlord

And

Derek Hill Tenant

L1 Application – Non-Payment of Rent

J. Levien c/o Portsmouth Residential Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Derek Hill (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

L2 Application – Persistent Late Payment of Rent

The Landlord applied for an order to terminate the tenancy and evict the Tenant because the Tenant has been persistently late in paying the Tenant's rent. The Landlord also claimed compensation for each day the Tenant remained in the rental unit after the termination date.

These two applications were heard by videoconference on April 19, 2023. The Landlord's representative, Gregg Foss, attended the hearing. As of 9:36 am, 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.

Preliminary Issue:

1. The Landlord's representative submitted that the company name of the Landlord changed from River City Property Management Inc to Portsmouth Residential Inc. The representative requested that the Landlord's application be amended to reflect this name change.
2. I consented to this application amendment pursuant to s. 200(1) of the *Residential Tenancies Act, 2006* (the "Act"), and in accordance with the Board's Rule of Procedure 15.4.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before May 21, 2023.

L2 Application – Persistent Late Payment of Rent

2. On April 6, 2022, the Landlord served the Tenant an N8 notice of termination with a date of termination of June 30, 2022. The notice of termination alleges that the Tenant paid the rent late 4 times over the period of January 1, 2022 to April 1, 2022. I am satisfied that this N8 was properly served and complies with s. 58(2) of the Act.
3. The Landlord filed an L2 application with the Board on May 9, 2022. I am satisfied that this application complies with s. 69(1) of the Act. The Tenant was in possession of the rental unit on the day of filing, and remains in possession of the rental unit as of the day of this hearing.
4. The Landlord incurred costs of \$186.00 for filing both the L1 and L2 applications and is entitled to reimbursement of those costs.
5. The rent is due on the first day of each month.
6. The Landlord's representative submitted that the Tenant paid the rent late for every month over the period of January 1, 2022 to April 1, 2022.
7. On the basis of the Landlord's uncontested evidence, I find that the Tenant has persistently failed to pay the rent on the date it was due. The rent was paid late 4 times in the 4-month period from January 1, 2022 to April 1, 2022.
8. After the notice was served, over the 12-month period from May 1, 2022 to the date of this hearing, the Landlord's representative submitted that the Tenant paid the rent late for 8 of the previous 12 months. The Landlord submitted a rent ledger with the dates of the 8 late rent payments.
9. Accordingly, on the basis of the Landlord's uncontested evidence, I find that the Tenant paid the rent late 8 times over the period of May 1, 2022 to the date of this hearing.

10. The Landlord's representative stated that the Landlord sent rent payment notices to the Tenant every month that a rent payment was late; however, the Tenant's monthly rent payments were rarely on time. The representative stated further that the Landlord requires the rent to be paid on time for the Landlord to meet his own financial obligations.

Relief from Eviction

11. 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.
12. Over the 16-month period from January 1, 2022 to the date of this hearing the Tenant paid the rent late 12 times. I am satisfied that if the rent is not paid on time, the Landlord encounters financial difficulties in paying his own tenancy related expenses on time. The Landlord's representative was not aware of any circumstances that should be considered in a determination of whether to provide the Tenant with eviction relief, nor was the Tenant or his representative present at the hearing to provide submissions with respect to the Tenant's relief from eviction. For these reasons, it would be unfair to the Landlord to grant the Tenant with eviction relief.
13. As a result, the requested eviction order shall be issued based on the Landlord's L2 application for persistent late payment of rent.

L1 Application – Non-Payment of Rent

14. As an eviction order is being issued based on the Landlord's L2 application it is not necessary to consider the request for eviction in the Landlord's L1 application. The Tenant will be ordered to pay the rent arrears owing less the last month's rent deposit and interest owing on the deposit pursuant to s. 86, s. 87(1)(a) and s. 106 of the Act.
15. As of the hearing date, the Tenant was still in possession of the rental unit.
16. The lawful rent is \$599.63. It is due on the first day of each month.
17. Based on the monthly rent, the daily rent/compensation is \$19.71. This amount is calculated as follows: \$599.63 x 12, divided by 365 days.
18. The Tenant has paid \$4,743.89 to the Landlord since the application was filed.
19. The rent arrears owing to April 30, 2023 are \$1,798.89.
20. The Landlord incurred costs of \$186.00 for filing both the L1 and L2 applications and is entitled to reimbursement of those costs.
21. The Landlord incurred an NSF bank charge of \$20.00 on March 21, 2023 and is entitled to reimbursement of this cost.

22. The Landlord collected a rent deposit of \$575.00 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.
23. Interest on the rent deposit, in the amount of \$4.25 is owing to the Tenant for the period from January 2, 2023 to April 19, 2023.
24. This order contains all of the reasons for the decision within it and no further reasons shall be issued.

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 21, 2023.
2. The Tenant shall pay to the Landlord \$1,425.64. This amount includes rent arrears owing up to the date of the hearing, the cost of filing both applications, and NSF charges. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1A for the calculation of the amount owing.
3. The Tenant shall also pay to the Landlord compensation of \$19.71 per day for the use of the unit starting April 20, 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 21, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 22, 2023 at 6.00% annually on the balance outstanding.
5. If the unit is not vacated on or before May 21, 2023, then starting May 22, 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 22, 2023.

May 10, 2023

Date Issued

Frank Ebner

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 22, 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	\$6,542.78
Application Filing Fee	\$186.00
NSF Charges	\$20.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$4,743.89
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	- \$575.00
Less the amount of the interest on the last month's rent deposit	- \$4.25
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	\$1,425.64
Plus daily compensation owing for each day of occupation starting April 20, 2023	\$19.71 (per day)

2023 ONL TB 33799 (CanLI)