



Order under Section 69 Residential Tenancies Act, 2006

Citation: Mike Da Ponte Holdings Inc v Kian McRod, 2023 ONLTB 33848

Date: 2023-05-09

File Number: LTB-L-055644-22

In the matter of: Suite 502, 80 Mill Street
Toronto ON M5A4T3

Between: Mike Da Ponte Holdings Inc Landlord

And

Kian McRod Tenant

L1 Application – Non-Payment of Rent

Mike Da Ponte Holdings Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Kian McRod (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes. The Landlord also claimed charges related to NSF cheques.

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 agent, Mike Da Ponte, and the Landlord's representative, Ashley Friel, attended the hearing. As of 11:57 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.

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 20, 2023.

L2 Application – Persistent Late Payment of Rent

2. On May 5, 2022, the Landlord served the Tenant an N8 notice of termination with a date of termination of July 31, 2022. The notice of termination alleges that the Tenant paid the rent late 8 times over the period of June 1, 2021 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 11, 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 \$201.00 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 8 months over the 11-month period of June 1, 2021 to April 1, 2022. The Landlord submitted a detailed schedule as part of the N8 providing specific payment information and payment dates over this period.
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 8 times in the 11-month period from June 1, 2021 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 every month over the previous 12 months. The Landlord's representative submitted further that, not only was the rent late, but no rent was received at all by the Landlord over this 12-month period. The Landlord submitted a rent ledger with two returned NSF cheques from the Tenant, one for rent for May 2022 and one for rent for June 2022. The rent ledger showed no further rent payments from the Tenant from July 2022 to the day of the hearing.
9. On the basis of the Landlord's uncontested evidence, I find that the Tenant paid the rent late every month over the 12-month period of May 1, 2022 to the date of this hearing, by not providing a single rent payment over this period.
10. The Landlord's agent testified that emails and text messages were sent on multiple occasions to the Tenant in April 2022 and in May 2022 regarding late rent payments, but there was never a response from the Tenant and the rent continued to be paid persistently late, and in most cases the rent was not paid at all. The Landlord's agent testified further

that the late rent payments increase the financial burden on the Landlord, and make it difficult for the Landlord to meet financial obligations associated with the tenancy.

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 23-month period from June 1, 2021 to the date of this hearing the Tenant paid the monthly rent late on 20 occasions. 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. I am also satisfied that, given the long and consistent record of late rent payments, and no effort by the Tenant to make rent payments since July 2022, providing the Tenant with relief from eviction on the condition of on-time rent payments would be prejudicial to the Landlord.
13. The Landlord's agent and representative were 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 the Tenant's 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.
14. As a result, the requested eviction order shall be issued based on the Landlord's L2 application for persistent late payment of rent.
15. The Landlord's representative requested an expedited eviction order. I accept that the Tenant's persistently late rent payments pose a significant financial hardship for the Landlord. However, the Landlord did not establish that the Tenant is responsible for an urgent problem in the unit that is a serious health or safety issue, or that the Tenant is involved in a serious illegal act in the unit. For this reason, and pursuant to s. 84 of the Act, the Landlord's request for an expedited eviction order is denied.

L1 Application – Non-Payment of Rent

16. 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.
17. As of the hearing date, the Tenant was still in possession of the rental unit.
18. The lawful monthly rent is \$2,950.00. It is due on the first day of each month.
19. Based on the monthly rent, the daily rent/compensation is \$96.99. This amount is calculated as follows: \$2,950.00 x 12, divided by 365 days.
20. The Tenant made no rent payments to the Landlord since the application was filed.

21. The rent arrears owing to April 30, 2023 are \$36,800.00.
22. The Landlord incurred costs of \$201.00 for filing both the L1 and L2 applications and is entitled to reimbursement of those costs.
23. The Landlord incurred NSF administration fees of \$25.00 each for four separate NSF cheques on February 4, 2022, March 4, 2022, May 5, 2022 and June 6, 2022. Pursuant to s. 17.5 of *Ontario Regulation 516/06*, the Landlord is entitled to reimbursement for a maximum of \$20.00 for the administration cost of each NSF cheque. Therefore, the Landlord is entitled to the reimbursement of \$80.00 in NSF administration costs.
24. There is no last month's rent deposit for this tenancy.
25. 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 20, 2023.
2. The Tenant shall pay to the Landlord \$35,000.00. This amount includes rent arrears owing up to the date of the hearing, the cost of filing both applications, and NSF charges. See Schedule 1A for the calculation of the amount owing.
3. Daily compensation beyond the day of the hearing exceeds the Board's monetary jurisdiction of \$35,000.00 pursuant to s. 207(1) of the Act, and therefore shall not be ordered.
4. If the Tenant does not pay the Landlord the full amount owing on or before May 20, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 21, 2023 at 6.00% annually on the balance outstanding.
5. If the unit is not vacated on or before May 20, 2023, then starting May 21, 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 21, 2023.

May 9, 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 21, 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	\$35,692.81
Application Filing Fee	\$201.00
NSF Charges	\$80.00
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	- \$0.00
Less the amount of the interest on the last month's rent deposit	- \$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 amount owing to the Landlord	\$35,973.81
Total the Tenant must pay as per the Board's monetary jurisdiction under s. 207(1) of the Act.	\$35,000.00
Daily compensation beyond the day of the hearing exceeds the Board's monetary jurisdiction of \$35,000.00 pursuant to s. 207(1) of the Act.	\$96.99 (per day)