



Order under Section 69 Residential Tenancies Act, 2006

Citation: Debra Hyatt v Ryley Melnychuk, 2023 ONLTB 33673

Date: 2023-05-09

File Number: LTB-L-018284-22

In the matter of: 647 Southern Avenue
Thunder Bay ON P7C2V3

Between: Debra aka Debbie Hyatt Landlord

And

Marlo-Ann Tennant Tenants
Ryley Melnychuk

2023 ONLTB 33673 (CanLII)

Debra aka Debbie Hyatt (the 'Landlord') applied for an order to terminate the tenancy and evict Marlo-Ann Tennant and Ryley Melnychuk (the 'Tenants') because

- the Tenants did not pay the rent that the Tenants owe;
- the Tenants has been persistently late in paying the Tenants' rent;

The Landlord also applied for an order requiring the 'Tenants' to pay the Landlord's reasonable out-of-pocket costs that are the result of the Tenants' failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

This application was heard by videoconference on April 18, 2023.

Only the Landlord and Landlord's Legal Representative E.Mcgrath Ervin attended the hearing.

As of 9:55 a.m., the Tenants were 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.

The Tenant Ryley Melnychuk signed in at 11:15 a.m. after the Landlord had signed off. He was advised that the hearing had already been completed.

Determinations:

L1 Application

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants 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 Tenants was still in possession of the rental unit.
3. The lawful rent is \$1,000.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$32.88. This amount is calculated as follows: \$1,000.00 x 12, divided by 365 days.
5. The Tenants has paid \$7,250.00 to the Landlord since the application was filed.
6. The rent arrears owing to the hearing date are \$5,350.00.
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 \$1,000.00 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 \$19.40 is owing to the Tenant for the period from January 10, 2021 to April 18, 2023.
10. 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 and whether the Landlord attempted to negotiate a repayment agreement with the Tenants and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

L2 Application

Persistent Late Rent Payment

11. The Landlord served the Tenants with a N8 notice on January 31, 2022 deemed served the same day with a termination date of March 31, 2022. The Landlord checked the box on the N8 notice indication that the Landlord is alleging that the Tenants have persistently paid the rental late, but details section of the notice describes various problems with the tenancy where police was involved, neighbours complaining, damages and about trash on the property. There were no details about late rent payments.
12. I find that the N8 notice is defective because it fails to provide sufficient information to allow the Tenants know which months the Landlords were claiming they had not paid rent on time. As a result, the Landlord was told at the hearing that the L2 application is dismissed for the N8 – persistently late notice.

Utility Bills

13. The Landlord testified that the Tenants' lease requires them to pay the water, electricity, and heat charges, in addition to other charges.
14. The Landlord testified that the water bills attached to the application and subsequent bills, have not been paid by the Tenants and as a result have fallen into default and the amounts outstanding have been added to the Landlord's property taxes.

15. The Landlord testified that she had spoken to the Tenants on numerous occasions about the outstanding bills.
16. I find that the total amount the Tenants owe for the water bills is \$695.85.
17. At the hearing the Landlord also requested that the Tenant be ordered to pay an additional \$1,896.41 because of the garbage strewn around by the Tenants and the disregard to outside cleanliness of the yard. The City of Thunder Bay sent three notices which the Tenants were aware of but made no efforts to clean up. The Landlord also approached the Tenants to make the clean up efforts herself, but they refused her entry to the property even with notice. Eventually the City of Thunder Bay came and cleaned up the yard and added \$1,896.41 to her taxes as well.
18. As this additional claim was not included in the Landlord's application, and the Landlord has not amended the application to add this claim, I will not address it in this order. It would be unfair to the Tenant to allow the Landlord to add an entirely new claim without any notice.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants voids this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$6,536.00 if the payment is made on or before May 20, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants has paid the full amount owing as ordered plus any additional rent that became due after May 20, 2023, but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
4. **If the Tenants does not pay the amount required to void this order the Tenants must move out of the rental unit on or before May 20, 2023.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$4,108.32. 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 \$32.88 per day for the use of the unit starting April 18, 2023 until the date the Tenant moves out of the unit.
7. The Tenant shall also pay to the Landlord \$695.85, which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the unpaid utility costs.
8. The total amount the Tenants owe the Landlord is \$7,231.85.

9. 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.
10. 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.
11. 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

Sheena Brar
Member, Landlord and Tenants 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 14, 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 Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before May 13, 2023

Rent Owing To May 31, 2023	\$13,600.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$7,250.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$6,536.00

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

Rent Owing To Hearing Date	\$12,191.78
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$7,250.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$1,000.00
Less the amount of the interest on the last month's rent deposit	- \$19.40
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$0.00
Total amount owing to the Landlord	\$4,108.38
Plus daily compensation owing for each day of occupation starting April 19, 2023	\$32.88 (per day)