



Order under Section 69 Residential Tenancies Act, 2006

Citation: BOCAN ENTRPRISES INC v Grigsby Cody, 2023 ONLTB 35694

Date: 2023-05-08

File Number: LTB-L-055091-22

In the matter of: 105, 1287 GRENADIER DRIVE
SUDBURY ON P3A4K9

Between: BOCAN ENTRPRISES INC Landlord

And

Cody Grigsby Tenant

BOCAN ENTRPRISES INC (the 'Landlord') applied for an order to terminate the tenancy and evict Cody Grigsby (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on April 11, 2023. The Landlord J. Nikolic, and the Tenant attended the hearing.

Preliminary Issue:

1. The Tenant requested an adjournment as he was aware of the proceedings a week prior, but he was working out of time and forgot about the hearing. He is seeking an adjournment to retain counsel. When asked if he had taken any steps to retain counsel, he stated he did not. The Landlord objected to the adjournment request as the arrears are substantial.
2. I denied the Tenant's adjournment request. The evidence is that the Tenant had been aware of the hearing at least a week prior. The Tenant states that he forgot about the hearing since that point, and therefore he has not made any attempts to retain counsel. Section 10 of the *Statutory Powers Procedure Act* states that a party may be represented at the hearing, but this right is not absolute and does not automatically guarantee an adjournment. Interpretation Guideline 3 states that an adjournment may be granted where counsel has been retained and is unavailable at the hearing. The Tenant has not retained counsel and has not satisfied me that he has taken reasonable steps to retain a representative.

Determinations:

3. 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.
4. As of the hearing date, the Tenant was still in possession of the rental unit.
5. The lawful rent is \$1,076.25. It is due on the 1st day of each month.
6. Based on the Monthly rent, the daily rent/compensation is \$35.38. This amount is calculated as follows: \$1,076.25 x 12, divided by 365 days.
7. The Tenant has not made any payments since the application was filed.
8. The rent arrears owing to April 30, 2023 are \$19,605.00.
9. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
10. The Landlord collected a rent deposit of \$1,050.00 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.
11. Interest on the rent deposit, in the amount of \$42.88 is owing to the Tenant for the period from February 15, 2021 to April 11, 2023.
12. 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 Tenant and find that it would not be unfair to postpone the eviction until May 31, 2023 pursuant to subsection 83(1)(b) of the Act.
13. The Tenant states he has not paid rent because the unit has had multiple floods, black mould in the bathroom, mice and squirrel problems and has not been provided with a replacement mailbox key. The Landlord submitted that these issues were never brought to their attention. The Tenant proposed a repayment plan where he would pay an additional \$250.00 every month. He also states that if he is required to vacate, he requires at least one month as he has pets.
14. I find it would not be unfair to postpone termination of the tenancy. I am not satisfied that the maintenance issues above exist as there is insufficient evidence, such as photographs or correspondence notifying the Landlord. I also note that purposely withholding rent is not a positive consideration. Furthermore, it would be unfair to impose the suggested payment plan on the Landlord as it would take 79 months to pay off the outstanding arrears. However, in consideration of the Tenant's pets, I find that he should be afforded some time to organize his move.

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:**
 - \$19,817.25 if the payment is made on or before May 31, 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 31, 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 31, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$18,011.05. 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 \$35.38 per day for the use of the unit starting April 12, 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 19, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 20, 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 31, 2023, then starting June 1, 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 June 1, 2023.

May 8, 2023

Date Issued

Camille Tancioco

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 December 1, 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 31, 2023

Rent Owing To May 31, 2023	\$19,631.25
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	\$19,817.25

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

Rent Owing To Hearing Date	\$18,917.93
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	- \$1,050.00
Less the amount of the interest on the last month's rent deposit	- \$42.88
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	\$18,011.05
Plus daily compensation owing for each day of occupation starting April 12, 2023	\$35.38 (per day)

