



Order under Section 69
Residential Tenancies Act, 2006

Citation: Sheridan Lane Apartments v Malitska, 2023 ONLTB 32459
Date: 2023-05-01
File Number: LTB-L-031661-22

In the matter of: 13, 1797 MAIN ST W HAMILTON
ON L8S1H6

Between: Sheridan Lane Apartments Landlord
And

Tetyana Malitska Tenant

Sheridan Lane Apartments (the 'Landlord') applied for an order to terminate the tenancy and evict Tetyana Malitska (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 unit after the termination date.

This application was heard by videoconference on April 4, 2023.

The Landlord's legal representative, Geoff Paine ('GP'), the Landlord's agent, Victor Chan, and the Tenant attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy, however, I find that it would not be unfair in all the circumstances to grant relief from eviction.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On May 9, 2022, the Landlord gave the Tenant an N8 notice of termination for persistent late payment of rent. The notice of termination alleges that the Tenant paid her rent late every month from May 2021 to April 2022 inclusive, and that the rent for May 2022 had not been paid as of May 6, 2022.
4. I find that the Landlord proved the allegations in the notice of termination on a balance of probabilities. The Tenant has persistently failed to pay the rent on the date it was due. The rent is due on the first day of each month, and this is a month-to-month tenancy. The rent was paid late for 13 months in a row from May 2021 to May 2022.

5. In particular, the Landlord's evidence established the following late payments that were alleged in the notice of termination:

Date rent was due	Date rent was paid
May 1, 2021	June 8, 2021
June 1, 2021	June 29, 2021
July 1, 2021	July 31, 2021
August 1, 2021	September 1, 2021
September 1, 2021	September 30, 2021
October 1, 2021	November 2, 2021
November 1, 2021	November 30, 2021
December 1, 2021	January 1, 2022
January 1, 2022	January 30, 2022
February 1, 2022	February 28, 2022
March 1, 2022	April 1, 2022
April 1, 2022	April 30, 2022
May 1, 2022	June 3, 2022

6. The Landlord filed a statement of account to support these allegations.
7. The Tenant did not provide evidence to dispute the payment dates. She took the position that she missed her rent payment for May 2021, but she paid her rent on time in the most months that followed, and in the months it was paid late, it was only by a few days. In other words, her position was that she was simply in arrears of rent from non-payment of her rent for May 2021, but was not paying her rent late in the months that followed as alleged by the Landlord.
8. I disagree with the Tenant's characterization of her payment history. I find it was reasonable for the Landlord to apply the Tenant's rent payments to the earliest amounts outstanding.
9. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Section 83 Considerations

10. The Landlord sought an order terminating the tenancy and evicting the Tenant, and the Tenant asked for relief from eviction.

11. Subsequent to service of the notice of termination, the Tenant continued to pay her rent late. In particular, the rent was paid late each month from June 2022 to the time of the hearing on April 4, 2022. This is despite the Landlord giving the Tenant a form N4 notice of termination of tenancy for non-payment of rent each month for the last year, as well as notice that rent is due on the first day of each month.
12. GP stated that this is a small landlord with obligations to pay its bills, mortgage, debts, taxes, employees, and contractors, and that it has the right to be paid the rent by the first of each month.
13. The tenancy commenced on October 1, 2015.
14. The Tenant is a single mother living in the rental unit with her 10-year-old child.
15. The Tenant stated that she lost her employment in April 2021, and found it difficult to find work in the midst of the COVID-19 pandemic. She stated that she applied to Ontario Works in May 2021, and paid her rent as soon as she received payment in June 2021.
16. The current monthly rent is \$919.55. The Tenant presently attends Mohawk College as a full time student, and is an Ontario Student Assistance Program ('OSAP') recipient. The Tenant stated that when she received her OSAP payment, her Ontario Works payment went down to \$460.00 per month from \$1000.00 starting in January 2023, which has resulted in late rent payments from January to March 2023. She stated that she presently still receives \$460.00 per month from Ontario Works, but that amount will increase to \$1,000.00 in June 2023 when she is no longer a student. She also receives \$749.00 per month for child support, and \$597.00 for the Ontario Child Benefit. The Tenant also earns up to \$200.00 per month from working as a translator.
17. The Tenant stated that she paid her rent for April 2023 the night before this hearing, on April 3, 2023 at approximately 8:00 p.m. She stated that she is now caught up and will be able to pay her rent on time moving forward.
18. I find the Tenant's evidence about her ability to pay her rent on time moving forward to be credible, and her intention to do so to be sincere. Any prejudice to the Landlord can be addressed by a conditional order requiring on time payment of the rent.
19. 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 not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
2. The Tenant shall pay the full monthly rent on or before the first day of each month, beginning on June 1, 2023 for a period of 12 months, up to and including May 2024.
3. The Tenant shall pay the rent for May 2023 on or before May 8, 2023 if she has not already done so.

4. If the Tenant fails to make any one of the payments in accordance with paragraph 2 or 3 of this order, the Landlord may, without notice to the Tenant, apply to the LTB within 30 days of the Tenant's breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant.
5. The Tenant shall pay the Landlord \$186.00 for the cost of filing the application.
6. If the Tenant does not pay the Landlord the full amount owing in paragraph 5 on or before May 12, 2023, the Tenant will start to owe interest. This will be simple interest, calculated from May 13, 2023 at 6.00% annually on the balance outstanding.

May 1, 2023

Date Issued

Mark Melchers

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.