



Order under Section 69 Residential Tenancies Act, 2006

Citation: Russo v Owens, 2023 ONLTB 33647

Date: 2023-04-28

File Number: LTB-L-053729-22

In the matter of: 1591 CHURCH ST
Windsor ON N8X1V4

Between: Joe Russo and Laurel Russo

Landlords

And

Donna Owens

Tenant

Joe Russo and Laurel Russo (the 'Landlords') applied for an order to terminate the tenancy and evict Donna Owens (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 30, 2023.

The Landlords' legal representative Tim Currie and the Tenant attended the hearing. The Tenant declined speaking with duty counsel prior to the hearing.

Determinations:

1. The Landlords 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.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$850.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$27.95. This amount is calculated as follows: \$850.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to March 31, 2023 are \$9,700.00.
7. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlords collected a rent deposit of \$850.00 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 \$26.04 is owing to the Tenant for the period from July 2, 2020 to March 30, 2023.

10. The Landlords stated phone calls were made to the Tenant on a weekly basis including leaving voicemail message to discuss a repayment of the arrears without success. The Landlords stated on March 27, 2023, the Landlords had an in-person meeting with the Tenant and the Tenant stated she will make payments towards the arrears.
11. The Tenant does not dispute the amount of arrears which she owes. The Tenant stated she has been an Ontario Disability Support program recipient for seven years. She stated she has not been able to pay her monthly rent because her bills which include hydro, gas, and food are really high. She stated she used to receive an additional \$600.00 per month from a part-time income but she stopped working approximately a year ago due to health issues.
12. The Tenant requested a payment plan for the repayment of the arrears and stated her total monthly income which she received is \$1,266.00. The Tenant stated she has nowhere to go if she is evicted and requested three months to find another place to move to if evicted.
13. The Landlords opposed a payment plan and stated it would not be feasible. The Landlords stated they are small Landlords who rely on the monthly rent to pay the mortgage, property taxes, and insurance and because of the arrears, the Landlords are financially distressed. The Landlords requested a standard order.

Analysis

14. 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 9, 2023 pursuant to subsection 83(1)(b) of the Act.
15. I find a payment plan is not viable based on the Tenant's monthly income. Therefore, I will not impose a payment plan for the arrears. I accept the Tenant is an ODSP recipient and relies on a fixed income. I accept the Landlord has previously attempted to negotiate a repayment of the arrears which was not disputed by the Tenant. While I accept the Tenant's submission that she will have to nowhere to go if she is evicted, I determined at the hearing that the tenancy is terminated. I stated that I would postpone the date of eviction to April 30, 2023. I find there has also been prejudice to the Landlords as the arrears are significant and no payments have been made since the application was filed. However, based on the date of issuance of this order and to allow time for the order to be received by the Tenant, the eviction date has been extended to May 9, 2023. The Tenant may void this order by paying the arrears owing. If the Tenant does not void the order, the Tenant must move out of the rental unit on or before May 9, 2023.

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:**

- \$10,736.00 if the payment is made on or before April 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$11,586.00 if the payment is made on or before May 9, 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 9, 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 9, 2023**
 5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$8,982.01. 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 \$27.95 per day for the use of the unit starting March 31, 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 9, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 10, 2023 at 6.00% annually on the balance outstanding.
 8. If the unit is not vacated on or before May 9, 2023, then starting May 10, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
 9. 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 10, 2023.

April 28, 2023

Date Issued

Kimberly Parish

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 10, 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 to void the eviction order and continue the tenancy if the payment is made on or before April 30, 2023

Rent Owing To April 30, 2023	\$10,550.00
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Total the Tenant must pay to continue the tenancy	\$10,736.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before May 9, 2023

Rent Owing To May 31, 2023	\$11,400.00
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Total the Tenant must pay to continue the tenancy	\$11,586.00

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

Rent Owing To Hearing Date	\$9,672.05
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$850.00
Less the amount of the interest on the last month's rent deposit	- \$26.04
Total amount owing to the Landlord	\$8,982.01
Plus daily compensation owing for each day of occupation starting March 31, 2023	\$27.95 (per day)