



Order under Section 69 Residential Tenancies Act, 2006

Citation: BETTER LIVING HOMES INC. v CHANTE FINCEE JAMES, 2023 ONLTB 33121

Date: 2023-04-28

File Number: LTB-L-033009-22

In the matter of: 1208, 126 BELLAMY ROAD NORTH
TORONTO ONTARIO M1J2L1

Between: BETTER LIVING HOMES INC. Landlord

And

CHANTE FINCEE JAMES Tenant

BETTER LIVING HOMES INC. (the 'Landlord') applied for an order to terminate the tenancy and evict CHANTE FINCEE JAMES (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (L1 Application).

BETTER LIVING HOMES INC. (the 'Landlord') also applied for an order to terminate the tenancy and evict CHANTE FINCEE JAMES (the 'Tenant') because the Tenant has been persistently late paying the Tenant's rent (L2 Application).

This application was heard by videoconference on April 17, 2023.

Only the Landlord's Legal Representative Debbesha Morris attended the hearing.

As of 11:52 a.m., 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. Since the Tenant did not attend and the Landlord was prepared to proceed, the matter proceeded by way of an uncontested hearing pursuant to section 7 of the *Statutory Powers Procedure Act*, R.S.O. 1990.

Determinations:

L1 Application-Non Payment of Rent

1. At the hearing the Landlord's Legal Representative relied on oral submissions and referred to documents to support their application.
2. 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.
3. As of the hearing date, the Tenant was still in possession of the rental unit.

4. The lawful rent was \$1,695.00 and it increased to \$1,715.34 on January 1, 2022. It then increased to \$1,758.22 on January 1, 2023. It is due on the 1st day of each month.
5. Based on the monthly rent, the daily rent/compensation is \$57.80. This amount is calculated as follows: \$1,758.22 x 12, divided by 365 days.
6. The Tenant has paid \$28,580.00 to the Landlord since the application was filed.
7. The rent arrears owing to April 30, 2023 are \$4,066.96.
8. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$1,695.00 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.
10. Interest on the rent deposit, in the amount of \$12.42 is owing to the Tenant for the period from January 1, 2023 to April 17, 2023.

L2 Application-Persistent Late Payment of Rent

11. The Landlord's evidence was the Tenant has persistently failed to pay the lawful rent on the date it was due. At the time of service of the N8 Notice, the rent has been paid late six of the previous six months. The period contained on the N8 Notice is June 1, 2021 until November 1, 2021.
12. Section 58 of the *Residential Tenancies Act, 2006*, (the 'Act') sets out that a landlord may give a tenant notice of termination of their tenancy if the tenant has persistently failed to pay rent on the date it becomes due and payable (N8 notice). The Landlord served the Tenant with an N8 Notice on November 10, 2021 with a termination date of January 31, 2022.
13. I accept the uncontested evidence of the Landlord and am satisfied on a balance of probabilities, that the Tenant has persistently failed to pay the rent on the date it was due. While six months is not an extended period of time, in my view when they are consecutive months, they illustrate a pattern of persistently late payments.
14. The Landlord's evidence was that since the N8 Notice was served, the Tenant has continued to pay the monthly rent late, resulting in the rent arrears mentioned earlier in this order. The Landlord submitted they have contacted the Tenant several times regarding the late payment of rent as well as the rent arrears. The Landlord stated that a week before the hearing the Tenant had made a proposal to the Landlord but could not confirm any payments had been made or that any steps had been taken to ensure the monthly rent was paid on time as it becomes due and owing.
15. The Landlord sought eviction within eleven days of this order.

Relief From Eviction

16. 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. I asked the Landlord if they were aware of any circumstances that the Tenant may be experiencing that would make an eviction unfair and they were aware of none. The Tenant did not attend the hearing to provide any evidence or submissions in support of granting relief from eviction.

It is ordered that:

1. Pursuant to the L2 Application, the tenancy between the Landlord and the Tenant is terminated effective May 9, 2023. The Tenant must move out of the rental unit on or before May 9, 2023.
2. The Tenant shall pay to the Landlord \$1,784.92 for arrears of rent owing up to the date of the hearing and \$201.00 in costs to file the application. The amount of 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.
3. The Tenant shall also pay the Landlord daily rent/compensation of \$57.80 per day for the use of the unit starting April 18, 2023 to the date the Tenant moves out of the unit.
4. 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.
5. 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.
6. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or after May 10, 2023.

April 28, 2023
Date Issued

 John Cashmore
 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 as the tenancy is terminated

Rent Owing To April 17, 2023	\$ 31,871.34
Application Filing Fee	\$ 201.00
Less the amount the Tenant paid to the Landlord since the application was filed	-28,580.00
Less the amount of the last month's rent deposit	- \$ 1,695.00
Less the amount of the interest on the last month's rent deposit	- \$ 12.42
Total amount owing to the Landlord	\$ 1,784.92
Plus daily compensation owing for each day of occupation starting April 18, 2023:	\$ 57.80 (per day)