



Order under Section 69 Residential Tenancies Act, 2006

Citation: Capreit Limited Partnership v Walters-mcnamee, 2023 ONLTB 32734

Date: 2023-04-28

File Number: LTB-L-056310-22

In the matter of: 508, 3425 MORNING STAR DR
MISSISSAUGA ON L4T1Y1

Between: Capreit Limited Partnership Landlord

And

Janice Sophia Walters-Mcnamee Tenant

Capreit Limited Partnership (the 'Landlord') applied for an order to terminate the tenancy and evict Janice Sophia Walters-Mcnamee (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on April 13, 2023.

The Landlord's legal representative, Jason Paine, attended the hearing.

The Tenant also attended the hearing.

Determinations:

1. 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.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$1,534.94. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$50.46. This amount is calculated as follows: \$1,534.94 x 12, divided by 365 days.
5. The Tenant has paid \$9,300.00 to the Landlord since the application was filed.
6. The rent arrears owing to April 30, 2023 are \$2,827.36.
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 \$1,497.52 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 \$10.56 is owing to the Tenant for the period from January 1, 2023 to April 13, 2023.

Landlord's Application

10. The position of the Landlord is while the Tenant has made significant payment towards the arrears the Landlord is not amenable to a repayment plan, but submitted a request for an eviction order from the Board with a delay date of May 31, 2023.
11. The position of the Tenant is she wanted to offer a repayment plan for the Board to consider accepting on her behalf. The Tenant submitted she could pay \$250.00 per month towards the arrears.
12. In order to determine if a payment plan was viable to preserve tenancy and allow the Landlord to receive payment for arrears and receive the full lawful monthly, the Tenant submitted financial evidence for my consideration. The Tenant's total income after tax is \$2,333.00 which is made up of a combination of OW, child tax, and Trillium support. The Tenant's total expenses amount to \$2,408.00. As the Tenant's expenses exceed her monthly income as of the day of the hearing, the tenancy is not viable. The Tenant does not have the financial means to be able to meet the terms of a \$250.00 repayment plan towards the arrears she submitted to the Board.
13. Section 83 Relief / Delay Eviction
14. The Tenant made an additional submission after submitting her finances to the Board and asked the Board to consider an extended eviction date of June 30, 2023.
15. The Tenant submitted she was seeking financial aid from agencies that would allow her to pay the arrears in full and she required more time than the Landlord's submission of May 31, 2023 in order to complete the process.
16. The Tenant submitted she has one 12 year old and a 21 year old living in the rental unit with her.
17. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and I have considered the Tenant's substantial payments towards the arrears in her effort to repay the arrears owed to the Landlord. In making my decision I also considered the Tenant having a 12 year old living in the rental unit and an order for eviction of May 31, 2023 could potentially disrupt the child's school. I weighed the outstanding arrears, having been reduced by a substantial amount, against the Landlord's request for a shorter eviction date, and in my opinion I am satisfied the Tenant should be granted more time to seek financial assistance to help pay the remaining balance owing to the Landlord, and I find that it would not be unfair to postpone the eviction until June 30, 2023 pursuant to subsection 83(1)(b) of the Act.

18. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
19. This order contains all reasons for the determinations and order made. No further reasons will be issued.

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:**
 - \$3,013.36 if the payment is made on or before April 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$4,548.30 if the payment is made on or before May 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$6,083.24 if the payment is made on or before June 30, 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 June 30, 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 June 30, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$626.32. 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 \$50.46 per day for the use of the unit starting April 14, 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. 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 June 30, 2023, then starting July 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 July 1, 2023.

April 28, 2023
Date Issued

Greg Brocanier
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 January 1, 2024 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 April 30, 2023

Rent Owing To April 30, 2023	\$12,127.36
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$9,300.00
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	\$3,013.36

B. 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	\$13,662.30
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$9,300.00
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	\$4,548.30

C. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before June 30, 2023

Rent Owing To June 30, 2023	\$15,197.24
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$9,300.00
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	\$6,083.24
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D. Amount the Tenant must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$11,248.40
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$9,300.00
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	- \$1,497.52
Less the amount of the interest on the last month's rent deposit	- \$10.56
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	\$626.32
Plus daily compensation owing for each day of occupation starting April 14, 2023	\$50.46 (per day)