



Order under Section 69 Residential Tenancies Act, 2006

Citation: Havcare Investments Inc v Jarrett b. Johnson, 2023 ONLTB 32565

Date: 2023-04-27

File Number: LTB-L-072338-22

In the matter of: 1204, 500 DAWES RD
Toronto ON M4B2G1

Between: Havcare Investments Inc Landlord

and

Jarrett b. Johnson Tenant

Havcare Investments Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Jarrett b. Johnson (the 'Tenant') because the Tenant did not pay the rent the Tenant owes.

This application was heard by videoconference on April 11, 2023.

The Landlord's Agent, owner, and principal, Carolyn Krebs, and the Tenant attended the hearing. The Tenant spoke with Duty Counsel prior to the start of the proceeding.

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.

What is the lawful rent?

3. The Tenant testified his rent was composed of a base rent of \$1,500.00 with an additional \$50.00 cost for a parking space.
4. The Tenant admitted his rent was \$1,550.00 at the time the N4 Notice was served and so, as found above, the validity of the N4 Notice was not in issue.

5. However, the Tenant submitted by March 1, 2023, his rent should not include the \$50.00 for parking because by then he no longer drove and the Landlord had removed his parking spot. I find the Tenant did not raise this as a reduction of services issue under s. 82 of the *Residential Tenancies Act, 2006* (the "Act") but was instead a question with respect to the amount of lawful rent.
6. The Tenant testified the Landlord took his parking spot away three months ago, gave him a pass for visitor parking for a few weeks, and that he has not had or used a parking spot since March 2023. The Tenant submitted once he stopped driving his rent became \$1,500.00.
7. The Landlord's Agent admitted the Tenant's particular parking spot was given away but testified the Tenant was given authorization to park in a different space.
8. Under section 125 of the Act, a decrease in rent is not automatic when a Tenant ceases to use a service but depends on the parties agreeing there will be a discontinuance of the service. Section 125 of the Act provides:

s. 125. A landlord shall decrease the rent charged to a tenant for a rental unit as prescribed if the landlord and the tenant agree that the landlord will cease to provide anything referred to in subsection 123(1) with respect to the tenant's occupancy of the rental unit.

[Emphasis added]

9. A parking space is one of the items identified in section 123(1) of the Act and to which s. 125 applies.
10. The issue then is whether, and if so, when the parties agreed the Landlord would no longer provide the Tenant with a parking space. In other words, even accepting the Tenant no longer drove or had a car in March - which was disputed between the parties, this is on its own insufficient to find the Landlord agreed to stop providing the Tenant with a parking space such that there is a right to a decrease in rent.
11. The Tenant did not testify the Landlord or someone on the Landlord's behalf told him they agreed they were no longer providing him with a parking space. His evidence was his parking spot was sold but he was provided with a different form of authorization to park – albeit he testified this was only for February.
12. The Landlord's Agent's evidence was the Tenant was still parking at the residential complex and was given authorization to park until the end of March, albeit in a different spot than originally agreed.
13. I found the Landlord's Agent evidence the Tenant was still provided with authorization to park and charged for parking in March credible and consistent both with the Landlord's supporting documentation and evidence provided orally during the hearing.

14. Additionally, when presented with evidence the Tenant was now using public transportation, the Landlord's Agent confirmed no parking authorization was provided to the Tenant for April and agreed to a retroactive rent decrease effective April 1, 2023.
15. While the evidence was also clear the Tenant acted consistently with his belief rent was only \$1,500.00 as of March 1, 2023, as set out above both parties must have agreed the Landlord will stop providing the service in issue.
16. In the above circumstances, I find it more likely than not the Landlord did not agree to stop providing the Tenant with a parking space until the hearing, at which time the Landlord's Agent agreed rent would decrease to \$1,500.00 as of April 1, 2023.
17. I therefore find the lawful rent was \$1,550.00 up to March 31, 2023, and became \$1,500.00 effective April 1, 2023. Rent is due on the 1st day of each month.

L1 Determinations

18. Based on the Monthly rent, the daily rent/compensation is \$49.32. This amount is calculated as follows: \$1,500.00 x 12, divided by 365 days.
19. The Tenant has paid \$4,550.00 to the Landlord since the application was filed.
20. The rent arrears owing to April 30, 2023, are \$7,800.00.
21. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Considerations regarding relief from eviction

22. 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.
23. The Landlord sought a standard order. The Tenant wished to remain in the rental unit and proposed paying an additional \$300.00 to \$450.00 dollars a month.
24. The Tenant has not yet lived at the rental unit for a year and has only paid rent 3 out of the past 7 months.
25. The Landlord had no confidence the Tenant would satisfy any payment plan and was concerned it would incur additional prejudice should an application for termination and eviction be required upon breach. The Landlord was also concerned the Tenant would overhold and additional time would be required to enforce any termination and eviction order.
26. The Tenant testified his arrears arose as shortly after he moved in his contract at a factory ended and he was out of work for 3 months. He testified he found employment but this was

not enough to sustain paying rent and other bills so he took on a roommate who now pays half the rent.

27. While the Tenant ought to have taken steps sooner, for the past two months during which the Tenant has had a roommate, and leaving aside the dispute over the cost of parking, rent has since been paid in full and on time.
28. The Tenant testified his business of freelance photography and construction has now picked up and, after taxes and his current expenses, I find he is left with approximately \$911.00 a month. It is noted the Tenant testified he will need to start repaying a student loan in the summer which he anticipates will be no more than approximately a hundred to a few hundred dollars a month.
29. The Tenant testified because he has pets and a poor credit rating it will be difficult to find another place to live, including at a shelter. It is noted the Tenant was only able to secure this rental unit with the assistance of EPIC.
30. The Tenant testified he has made inquiries for assistance through EPIC and is applying to the Rent Bank. The Landlord questioned whether the Tenant had actually applied given they have not received any communications as they submitted was standard practice.
31. While sympathetic to the Tenant's concerns about paying \$800.00 a month, as he submitted was at one point suggested by the Landlord, I do not find the Tenant's proposed payment plan of \$300.00 to \$450.00 a month reasonable. The arrears are significant from what is a relatively short tenancy. That said the Tenant has now taken steps to mitigate and these steps appear to be working.
32. Regardless of whether he obtains additional funding, the Tenant was open to, and the evidence before me supports finding he is capable of, paying \$750.00 a month for the next four months and \$450.00 a month thereafter until the arrears are paid in full. Overall, this will abbreviate the length of time for repayment of the arrears to a little bit more than one year. Should the Tenant receive additional funding including from the Rent Bank he remains free to pay off the entirety or a portion of the arrears earlier.
33. As a result, I find the Tenant shall be given the opportunity to preserve his tenancy pursuant to the conditions set out below.

It is ordered that:

1. The Tenant shall pay to the Landlord \$7,986.00 for arrears of rent up to April 30, 2023 and costs.
2. The Tenant shall pay to the Landlord the amount set out in paragraph 1 of this order in accordance with the following schedule:

Date Payment Due	Amount of Payment
May 15, 2023	\$750.00

June 15, 2023	\$750.00
July 15, 2023	\$750.00
August 15, 2023	\$750.00
September 15, 2023	\$450.00
October 15, 2023	\$450.00
November 15, 2023	\$450.00
December 15, 2023	\$450.00
January 15, 2024	\$450.00
February 15, 2024	\$450.00
March 15, 2024	\$450.00
April 15, 2024	\$450.00
May 15, 2024	\$450.00
June 15, 2024	\$450.00
July 15, 2024	\$450.00
August 15, 2024	\$36.00

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3. The Tenant shall also pay to the Landlord new rent on time and in full as it comes due and owing for the period May 1, 2023 to August 1, 2024 or until the arrears are paid in full, whichever date is earliest.
4. If the Tenant fails to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenant to the Landlord pursuant to paragraph 1 of this order shall become immediately due and owing and 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 and requiring that the Tenant pay any new arrears, NSF fees and related charges that became owing after April 30, 2023.

April 27, 2023

Date Issued

Rebecca Case

Vice Chair, 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.