



Order under Section 69 Residential Tenancies Act, 2006

Citation: Havcare Investments Inc v Jack Macneil, 2023 ONLTB 32412

Date: 2023-04-24

File Number: LTB-L-057352-22

In the matter of: 521, 500 DAWES RD
Toronto ON M4B2G1

Between: Havcare Investments Inc Landlord

And

Jack Macneil Tenants
Jane Savva
Zachery Savva

Havcare Investments Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Jack Macneil, Jane Savva and Zachery Savva (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on April 13, 2023. The Landlord, Carolyn Krebs, and the Tenant, Jane Savva, attended the hearing. The Tenant spoke with Tenant Duty Counsel on the hearing date and indicated they were representing all named tenants.

Determinations:

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Nonpayment of Rent (N4 Notice). The Tenants 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 Tenants were still in possession of the rental unit.
3. The lawful rent is \$1,500.00. It is due on the 1st day of each month.
4. 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.
5. The Tenants have not made any payments since the application was filed.
6. The rent arrears owing to April 30, 2023 are \$12,000.00.

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 \$1,500.00 from the Tenants 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 \$29.49 is owing to the Tenants for the period from July 1, 2022 to April 13, 2023.
10. The Tenant believed that ODSP and OW were paying the Landlord directly for the rent each month and indicated that they were surprised to receive the hearing package about a week and a half before the hearing which indicated that they owed a substantial amount of rent. The Tenant further indicated that they had reached out to their worker a couple of days before the hearing regarding the issue, but their worker indicated that they would require additional time to look into it.
11. The Tenant has just started work within the past 3 weeks before the hearing and are no longer receiving OW. Their son and brother (the other 2 Tenants) are receiving benefits, but the Tenant stated that they were only receiving the supplemental portion of their benefits and not the housing portion. The Tenant could not provide any documentary stubs from social assistance at the hearing. The Tenant did not provide any documentary evidence supporting their income, however, the Tenant suggested that they could pay the rent on the first of the month and an additional amount towards the rent arrears up to \$700.00 starting May 1st.
12. The Landlord was opposed to any payment plan on the basis that they had only received first and last month's rent from OW and ODSP and an additional month at the onset of the tenancy, but the Landlord has not received any rent for September and onwards.
13. The Landlord testified that they heard the Tenant speaking with their superintendent in October and overheard her suggesting that she was hoping to come into some sort of settlement benefit to catch up on the rent. Additionally, the Landlord indicated that she was on the phone when the superintendent spoke with the Tenant a few days before the hearing where the Tenant had stated that they could not afford to pay the rent arrears and wanted until April 30th to move out of the rental unit.
14. The Landlord further testified that she attended the social services offices to deliver copies of the N4 Notice to OW and ODSP and still had not received any feedback or communication regarding the outstanding balance since October.
15. The Tenant stated that she did not attend the Landlords office in October and had not been in the office since August of 2022. The Tenant further indicated that they did not say that they could move out by the end of April.
16. Both the Landlord and the Tenant were equally credible in their submissions.
17. Based on the evidence before me from the Tenant, I do not find their payment proposal appropriate under the circumstances. The Tenant did not provide any documentary evidence to support her ability to pay the ongoing rent or the rent arrears and they have

just started work and the Landlord has not received any rent from the Tenant aside from their social assistance at the onset of the tenancy.

18. The Tenant has lived in the rental unit for less than one year. They have their brother and son who have special needs and they also have pets which make their housing choices more limited. Because of the special needs of her son and her brother, the Tenant explained that they would require additional time in order to ease into new living accommodations because the change would create additional pressure and stress.
19. Although I understand that there is financial prejudice to the Landlord, the additional time may provide the Tenant with the opportunity to have the issue rectified with social services and may result in the arrears being cleared up through social services before the order becomes enforceable.
20. 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 postpone the eviction until May 31, 2023 pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$12,186.00 if the payment is made on or before April 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$13,686.00 if the payment is made on or before May 31, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after May 31, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
4. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before May 31, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$9,797.67. 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 Tenants. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$49.32 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 Tenants do not pay the Landlord the full amount owing on or before May 5, 2023, the Tenants will start to owe interest. This will be simple interest calculated from May 6, 2023 at 6.00% annually on the balance outstanding.
8. The Landlord or the Tenants 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 May 31, 2023, then starting June 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 June 1, 2023.

April 24, 2023

Date Issued

Terri van Huisstede
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 December 1, 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.

*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 Tenants 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	\$12,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Total the Tenant smust pay to continue the tenancy	\$12,186.00

B. Amount the Tenants 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	\$13,500.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Total the Tenants must pay to continue the tenancy	\$13,686.00

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

Rent Owing To Hearing Date	\$11,141.16
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$1,500.00
Less the amount of the interest on the last month's rent deposit	- \$29.49
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total amount owing to the Landlord	\$9,797.67

Plus daily compensation owing for each day of occupation starting April 14, 2023	\$49.32 (per day)
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