



Order under Section 69 Residential Tenancies Act, 2006

Citation: FERGUSLEA PROPERTIES LIMITED v ST-JEAN, 2023 ONLTB 31923

Date: 2023-04-21

File Number: LTB-L-069840-22

In the matter of: 1120, 90 WOODRIDGE CRESCENT NEPEAN
ON K2B7T1

Between: FERGUSLEA PROPERTIES LIMITED Landlord

And

PETER ST-JEAN Tenant

FERGUSLEA PROPERTIES LIMITED (the 'Landlord') applied for an order to terminate the tenancy and evict PETER ST-JEAN (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 23, 2023.

The Landlord's legal representative Lyon Gilbert attended the hearing. The Tenant attended the hearing and spoke to duty counsel prior to 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. On February 1, 2023, the lawful monthly rent increased to \$1,913.08. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$62.90. This amount is calculated as follows: \$1,913.08 x 12, divided by 365 days.

5. The Tenant has paid \$5,560.40 to the Landlord since the application was filed. The Landlord stated there is also \$3,167.77 for credits which have been applied to the Tenant's account.
6. The rent arrears owing to March 31, 2023 are \$23,742.55.
7. The parties both agree to the amount of the arrears.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$1,811.22 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 \$17.62 is owing to the Tenant for the period from January 1, 2021 to March 23, 2023.

Tenant's request to raise section 82 issues

11. The hearing was previously adjourned from March 8, 2022 because the Tenant wanted to raise maintenance issues pursuant to s. 82 of the *Residential Tenancies Act, 2006* (the "Act"). An interim order was issued by the Board on March 10, 2022 ("interim order") which ordered the Tenant to pay the ongoing monthly rent commencing April 1, 2022 until the matter is heard or the Board orders otherwise. The interim order also notes if the Tenant fails to comply then the Board may refuse to consider the Tenant's evidence and submissions and order the Tenant to pay costs of the hearing. The interim order also notes that no later than 15 business days prior to the hearing, parties are to exchange by email and file with the Board, all documents, receipts, photographs, and recordings to be relied upon at the hearing.
12. As of the date of the hearing, the Tenant did not file any documentary evidence in support of the section 82 issues the Tenant intended to raise at the hearing. When the Tenant was asked why he had not filed anything in advance of the hearing, he stated it was because the Landlord's evidence included the documentation relating to the maintenance issues the Tenant wanted to raise.
13. The Landlord opposed the Tenant raising s. 82 issues because the Tenant has not complied with the terms set out in the interim order. The Landlord stated the Tenant did not provide any details regarding the rent abatement the Tenant is seeking, nor produced any photographs or documents to support any maintenance issues. The Landlord further stated the Tenant failed to pay the ongoing monthly rent as ordered in the interim order. The Landlord stated since the interim order was issued, the Tenant only paid the monthly rent for April 2022.
14. I did not allow the Tenant to raise any s. 82 issues. The Tenant did not file any documentation in advance of the hearing as directed by the interim order, including any rent abatement amount which the Tenant may be seeking. While the Landlord may have

filed some documentation in to respond to the s. 82 issues, I find the onus is on the Tenant to provide the Board and the Landlord with what the Tenant is relying upon in support of the s. 82 issues.

Landlord's request for costs

15. The Landlord requested costs in the amount of \$1,000.00. The Landlord stated the Tenant has acted in bad faith, caused systemic delays, has failed to pay the ongoing monthly rent and has not provided an explanation why he has not been paying the monthly rent.
16. The Tenant stated he has not intentionally tried to delay the proceedings as it relates to the Landlord's application. He stated he believed he did not need to file any documents because the Landlord filed documentation as it relates to the maintenance issues.
17. The Landlord's request for costs is denied. Rule 23.3 of the Board's Rules provides the Board with the ability to award costs. Rule 23.3 stipulates that a party who engages in unreasonable conduct which causes undue delay or expense may be ordered to pay costs to another party. I accept the Tenant's explanation and I do not find that he intentionally tried to delay the hearing, or that he acted in bad faith.
18. The Landlord attempted to negotiate a repayment of the arrears with the Tenant without success. The Landlord produced 31 pages of email correspondence between the Tenant and the Landlord's legal representative from March 3, 2022 to November 2, 2022. The correspondence largely consists of the Landlord's requests for payment of arrears and ongoing monthly rent and the Tenant's promises to pay with reasons for the delays in payment. The correspondence from the Landlord did offer the Tenant the opportunity to negotiate a payment plan for the arrears. As a result, I find that the Landlord fulfilled its duties to attempt resolution of the application during the COVID-19 pandemic pursuant to subsection 83(6) the Act.
19. The Landlord requested a standard order and the Tenant requested eviction be postponed until April 30, 2023 as that is the date he will be vacating the rental unit to move into a retirement home. The Tenant stated if he is forced to vacate sooner he would likely have to move in with friends.
20. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The Tenant has not complied with the terms of the interim order, has not paid the ongoing monthly rent since April 2022 and I find the arrears are significant.

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:**
 - \$25,841.63 if the payment is made on or before April 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$27,754.71 if the payment is made on or before May 2, 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 2, 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 2, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$21,596.51. 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 \$62.90 per day for the use of the unit starting March 24, 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 2, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 3, 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 May 2, 2023, then starting May 3, 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 May 3, 2023.

April 21, 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 3, 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	\$31,216.03
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$5,560.40
Total the Tenant must pay to continue the tenancy	\$25,841.63

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before May 2, 2023

Rent Owing To May 31, 2023	\$33,129.11
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$5,560.40
Total the Tenant must pay to continue the tenancy	\$27,754.71

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

Rent Owing To Hearing Date	\$28,799.75
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$5,560.40
Less the amount of the last month's rent deposit	- \$1,811.22
Less the amount of the interest on the last month's rent deposit	- \$17.62
Total amount owing to the Landlord	\$21,596.51
Plus daily compensation owing for each day of occupation starting March 24, 2023	\$62.90 (per day)