



Order under Section 69 Residential Tenancies Act, 2006

Citation: Parkdale Apartment Nominee 1 Inc. v Wishart, 2023 ONLTB 31447

Date: 2023-04-19 **File Number:**
LTB-L-035525-22-RV

In the matter of: 408, 87 JAMESON AVE
TORONTO ON M6K2W8

Between: Parkdale Apartment Nominee 1 Inc. Landlord

And

Storm Wishart Tenant

Review Order

Parkdale Apartment Nominee 1 Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Storm Wishart (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard on February 2, 2023 and resolved by order LTB-L-035525-22 issued on February 22, 2023.

On March 13, 2023, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

On March 14, 2023 interim order LTB-L-035525-22-RV-IN was issued, staying the order issued on February 22, 2023.

This request for review was heard by videoconference on March 30, 2023. The Landlord's legal representative Bryan Rubin and the Tenant attended the hearing.

Determinations:

Review Request:

1. The Tenant's request for review alleges that the Tenant was not reasonably able to participate in the hearing. The Tenant testified that during the last week of January 2023, he forgot his keys at his friend's residence. The key chain misplaced contained the Tenant's mailbox keys and as such, the Tenant was unable to check his mail until February 5, 2023 which is the date his friend returned his keys.
2. The Tenant testified that prior to misplacing his keys he did not receive notice of hearing by the Board. After February 5, 2023, the Tenant checked his mailbox and discovered the notice of hearing and learned that the hearing had occurred three days prior.
3. Based on the evidence and submissions before the Board, I am satisfied that the Tenant was not reasonably able to participate in the hearing. I accept the Tenant's evidence that he inadvertently misplaced his keys and as such, was unable to access his mailbox. I find that had the Tenant not misplaced his keys, he would have received notice of hearing and would have participated in the proceeding.
4. As such, the request for review is granted and the matter was heard de novo (anew).

L1 application:

5. 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.
6. As of the hearing date, the Tenant was still in possession of the rental unit.
7. The lawful rent is \$1,799.00. It is due on the 1st day of each month.
8. Based on the Monthly rent, the daily rent/compensation is \$59.15. This amount is calculated as follows: \$1,799.00 x 12, divided by 365 days.
9. The Tenant has not made any payments since the application was filed.
10. The rent arrears owing to March 31, 2023 are \$58,852.40.
11. The Landlord incurred costs of \$244.00 for filing the application and is entitled to reimbursement of those costs.
12. The Landlord collected a rent deposit of \$1,799.00 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.
13. Interest on the rent deposit, in the amount of \$58.92 is owing to the Tenant for the period from June 1, 2021 to March 30, 2023.
14. The arrears of rent claimed exceed the Board's monetary jurisdiction of \$35,000.00. The Landlord's legal representative understood that in accordance with section 207(3) of the

Residential Tenancies Act, 2006 (Act), by pursuing this application before the Board, the Landlord cannot claim any arrears in excess of \$35,000.00 in a new application or before a Court of competent jurisdiction.

15. While the Board cannot order a person to pay more than \$35,000.00, I find that this does not apply to “stay and pay” option set out in paragraph 2 below, as the Tenant is not required to pay that amount. The Tenant has the option of paying the amount in paragraph 7 if they wish to continue tenancy.

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'), 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.
17. At the hearing the Tenant did not propose a repayment plan, but rather requested additional time to secure alternate housing. The Tenant testified that throughout the last two years he has experienced issues with loss of employment and deaths in his family. The Landlord opposed any delay arguing that the Tenant has made no payments to the Landlord in approximately two years.
18. In my view I find that it would be unfair to grant any relief from eviction. The arrears of rent are substantial and exceed the Board’s monetary jurisdiction. While I acknowledge that the Tenant has experienced some hardship, the lack of good faith payments or efforts to reduce the arrears throughout the last two years do not warrant any relief from eviction.

It is ordered that:

1. The request to review order LTB-L-035525-22 issued on February 22, 2023 is granted. The order is cancelled and replaced with this order.
2. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
3. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$60,837.40 if the payment is made on or before April 30, 2023. See Schedule 1 for the calculation of the amount owing.
4. 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 April 30, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.

5. **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 April 30, 2023**
6. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$35,000.00. 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 as well as the amount in excess of the Board's monetary jurisdiction. See Schedule 1 for the calculation of the amount owing.
7. The Tenant shall also pay the Landlord compensation of \$59.15 per day for the use of the unit starting March 31, 2023 until the date the Tenant moves out of the unit.
8. If the Tenant does not pay the Landlord the full amount owing on or before April 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 1, 2023 at 6.00% annually on the balance outstanding.
9. If the unit is not vacated on or before April 30, 2023, then starting May 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 May 1, 2023.

April 19, 2023

Date Issued

Fabio Quattrociocchi

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 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 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	\$60,651.40
Application Filing Fee	\$186
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	\$60,837.40

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

Rent Owing To Hearing Date	\$58,827.90
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	- \$1,799.00
Less the amount of the interest on the last month's rent deposit	- \$58.92
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
Less the amount in excess of the Board's monetary jurisdiction	\$22,155.98
Total amount owing to the Landlord	\$35,000.00