



Order under Section 69 Residential Tenancies Act, 2006

Citation: Cristo v Shaffer, 2023 ONLTB 31320

Date: 2023-04-17

File Number: LTB-L-051152-22

In the matter of: 1, 18 SIMCOE ST N
OSHAWA ON L1G4R8

Between: Mario Cristo Landlord

And

Joshua Shaffer Tenant

Mario Cristo (the 'Landlord') applied for an order to terminate the tenancy and evict Joshua Shaffer (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 28, 2023. The Landlord's legal representative Victoria Orlandi and the Tenant attended the hearing.

Determinations:

Section 82:

1. The Tenant filed with the Board evidence supporting maintenance concerns with the rental unit. The Tenant's evidence is filed pursuant to section 82 of the *Residential Tenancies Act, 2006* (the Act) which states:

- 82** (1) At a hearing of an application by a landlord under section 69 for an order terminating a tenancy and evicting a tenant based on a notice of termination under section 59, the Board shall permit the tenant to raise any issue that could be the subject of an application made by the tenant under this Act if the tenant,
- (a) complies with the requirements set out in subsection (2); or
 - (b) provides an explanation satisfactory to the Board explaining why the tenant could not comply with the requirements set out in subsection (2)

(2) The requirements referred to in subsection (1) are the following:

1. The tenant shall give advance notice to the landlord of the tenant's intent to raise the issue at the hearing.
2. The notice shall be given within the time set out in the Rules.
3. The notice shall be given in writing and shall comply with the Rules.

2. In accordance with section 82(2) of the Act, the Board's Rules of Procedure provide as follows:

19.4. Unless the LTB has directed or ordered otherwise, a tenant who intends to raise issues under sections 82(1) or 87(2) of the RTA during a hearing for a landlord's application about rent arrears shall provide the other parties and the LTB with the following at least 7 days before the scheduled CMH or hearing:

1. a written description of each issue the tenant intends to raise; and
2. a copy of all documents, pictures and other evidence that the tenant intends to rely upon at the hearing.

3. The Tenant failed to comply with the notice / disclosure requirements of Rule 19.4. Although the Tenant filed evidence to the Board, the Tenant did not disclose this evidence to the Landlord in advance of the hearing.
4. Therefore, the Tenant is not entitled to raise section 82 issues and the matter proceeded to hear the Landlord's claim for non-payment of rent only. The Tenant was advised that they could file their own application under the Act.

Non-payment:

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 \$1,100.00. It is due on the 1st day of each month.
8. Based on the Monthly rent, the daily rent/compensation is \$36.16. This amount is calculated as follows: \$1,100.00 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 \$13,200.00.

11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. The Landlord collected a rent deposit of \$1,100.00 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 \$22.84 is owing to the Tenant for the period from November 21, 2021 to March 28, 2023.
14. 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.
15. The evidence before the Board is clear that the Tenant has not experienced any unforeseen hardship or financial issues. Rather, the Tenant admitted to wilfully withholding the rent payments simply because he was dissatisfied with the Landlord.
16. The Tenant is not permitted to withhold payment of rent and further is not entitled to take the law into their own hands. As of the hearing date, the Tenant had not filed an application before the Board against the Landlord. Therefore, the Tenant is not entitled to any offset of the arrears.
17. As the Tenant has wilfully withheld payment from the Landlord and has not experienced any hardship, I find that it would be unfair to order any relief from eviction.

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:**
 - \$14,486.00 if the payment is made on or before April 28, 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 April 28, 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 April 28, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$12,175.64. 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 \$36.16 per day for the use of the unit starting March 29, 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 April 28, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 29, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before April 28, 2023, then starting April 29, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. 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 April 29, 2023.

April 17, 2023

Date Issued

Fabio Quattrociochi

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 October 29, 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 28, 2023

Rent Owing To April 30, 2023	\$14,300.00
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 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	\$14,486.00

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

Rent Owing To Hearing Date	\$13,112.48
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	- \$1,100.00
Less the amount of the interest on the last month's rent deposit	- \$22.84
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	\$12,175.64
Plus daily compensation owing for each day of occupation starting March 29, 2023	\$36.16 (per day)