



Order under Section 69 Residential Tenancies Act, 2006

Citation: Starlight Blackstar OPCO 2 ULC v Smith, 2023 ONLTB 30662

Date: 2023-04-13

File Number: LTB-L-041488-22

In the matter of: 402, 2220 WESTON RD
NORTH YORK ON M9N1Y6

Between: Starlight Blackstar OPCO 2 ULC Landlord

And

Winnie Smith Tenant

Starlight Blackstar OPCO 2 ULC (the 'Landlord') applied for an order to terminate the tenancy and evict Winnie Smith (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on February 27, 2023.

Only the Landlord's representative I King attended the hearing.

As of 2:45 pm, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

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. The lawful rent is \$1,915.58. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$62.98. This amount is calculated as follows: \$1,915.58 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to February 28, 2023 are \$61,957.80.

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 \$1,821.47 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.
9. Interest on the rent deposit, in the amount of \$57.41 is owing to the Tenant for the period from May 19, 2020 to February 27, 2023.

The Board's Monetary Jurisdiction:

10. The amount claimed by the Landlord exceeds the monetary jurisdiction of the Board. Subsection 207(1) of the *Residential Tenancies Act*, 2006, S.O. 2006, c.17 (the 'Act'), limits the monetary jurisdiction of the Board to that of the Small Claims court, which is currently \$35,000.00
11. The Landlord was advised of the Board's monetary limitation and that section 207 (3) of the Act provides if a party obtains a Board order at the maximum amount all rights of the party in excess of the Board's monetary jurisdiction are extinguished. The Landlord acknowledged that the maximum the Board can order the Tenant to pay is \$35,000.00
12. As the Small Claims Court has the authority to award costs on top of its monetary jurisdiction, the LTB has the same authority. (see *Wu v. Adler*, 2019 CanLII 94002 (ON SCSM)).
13. While the amount the Tenant is ordered to pay in this order is limited to \$35,000.00 plus costs, I find that this monetary jurisdiction does not apply to the amount the Tenant may pay in order to void this order and continue the tenancy in accordance with subsection 74(4) of the Act.
14. I agree with the interpretation of the Board's monetary jurisdiction contained in the order TEL-80518-17-RV (Re), 2018 CanLII, issued on February 6, 2018. This order states that if the Tenants pay \$33,790.00 to the Landlord or to the Board in trust, the order for eviction will be void. This amount exceeded the monetary jurisdiction of the Board in effect at the time. The Board explained why it had the authority to make such an order:

The Board is not ordering this amount to be paid. This amount is optional and only required if the Tenant elects to remain in the rental unit. Therefore, the Board is not ordering this amount to be paid and is not ordering an amount that exceeds the limit.

15. I find that this approach is also consistent with the Divisional Court's direction in *Hornstein et al. v. Royal Bank of Canada*, 2010 ONSC 3134. The court stated that "to hold that the monetary cap applied to "the outstanding arrears of rent" would result in an absurdity. The defaulting tenant could continue *ad infinitum* to merely pay the monetary limit and continue in possession, all the while continuing in default."

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. The Tenant did not attend the hearing to present evidence or submissions in support of granting 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:**
 - \$65,974.96 if the payment is made on or before April 24, 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 24, 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 24, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$35,186.00. This amount includes rent arrears owing up to the date of the hearing (up to the Board's monetary jurisdiction) 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 \$62.98 per day for the use of the unit starting February 28, 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 24, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 25, 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 April 24, 2023, then starting April 25, 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 April 25, 2023.

April 13, 2023

Date Issued

Heather Kenny

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 25, 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 24, 2023

Rent Owing To April 30, 2023	\$65,788.96
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	\$65,974.96

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

Rent Owing To Hearing Date	\$61,742.68
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	- \$1,821.47
Less the amount of the interest on the last month's rent deposit	- \$57.41
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	maximum monetary jurisdiction of \$35,186.00
Plus daily compensation owing for each day of occupation starting February 28, 2023	\$62.98 (per day)

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