



Order under Section 69 Residential Tenancies Act, 2006

Citation: 112/114 Braemar Avenue INC v Dickenson Marcus, 2023 ONLTB 30530

Date: 2023-04-12

File Number: LTB-L-010546-22

In the matter of: Upper, 114 BRAEMAR AVE
TORONTO ON M5P2L4

Between: 112/114 Braemar Avenue INC

Landlord

And

Cayley Dickenson Marcus

Tenant

112/114 Braemar Avenue INC (the 'Landlord') applied for an order to terminate the tenancy and evict Cayley Dickenson Marcus (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was originally heard by videoconference on August 30, 2022. An order was not issued as a result of that hearing. This application was heard de novo on March 31, 2023.

The Landlord Corrie Hain and the Tenant attended 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. The lawful rent is \$2,956.00. It is due on the 1st day of each month.
4. The Landlord submits that the rent arrears owing to March 31, 2023 are \$1,608.00. The Tenant submits that the Landlord has not met their burden of proof to establish that there are rent arrears.
5. The Landlord was self-represented and filled out their L1 information update form incorrectly. On the first update sheet they filed, the Landlord listed the total amount of outstanding arrears as \$1,608.00. However, the Landlord listed the additional rent that had come due as only \$340.00. Rent that has come due since the application was filed includes all rent charged and is therefore significantly higher than what was listed by the Landlord. The landlord only listed unpaid rent as rent that has come due.
6. The Landlord was asked to refile their L1 information update sheet. This time the Landlord indicated that \$37,708.00 in new rent has come due since the application was filed and the

Tenant has paid 37,368.00 since the application was filed. The difference in those numbers is \$340.00 in unpaid rent which is the what the Landlord had put on the first version of the update sheet. The information being inputted into the update sheet was the same it was just communicated in a different way. However, this time the Landlord put the total amount of outstanding rent as \$1,980.00. After working through the math during the hearing the Landlord amended that number orally and indicated that the total amount of outstanding arrears is \$1,608.00. That is the same total that was on the first version of the update sheet.

7. The Landlord submitted into evidence a document which lists every payment that they have received from the Tenant during the application period and when they received that payment. The payments listed for January and February 2022 match the payments listed on the Landlord's original application. The rent charged for those two months was \$5,768.00 while the Tenant only paid \$4,500.00. This resulted in \$1,268.00 in unpaid rent.
8. Since the application was filed \$37,708.00 in rent has come due for the period between March 2022 and March 2023. The sum of the payments listed on the Landlord's supporting document, plus an additional payment in March 2023 that was made post the creation of the document, equal the \$37,368.00 that the Landlord states was paid by the Tenant since the application was filed.
9. As there is internal consistency with the payments listed on the landlord's supplemental document, the original application, and the numbers inputted into the two updates sheet I am satisfied that the Landlord's numbers are reliable and that they have met their burden of proof regarding the sum of the outstanding arrears. The Landlord filled out the first version of the update sheet with the correct total but misunderstood what was being asked of them in the boxes for rent that has come due, and payments made since the application. On the second update sheet the Landlord filled out the sheet with the correct understanding of what is meant by rent that has come due and payments made since the application was filed but made a math error in their total. As the Landlord was being asked to refile their materials during the hearing on a short timeline, that they made a math error does not lead me to believe that their evidence is entirely unreliable. The Landlord revised their total orally at the hearing, and as stated previously the payments that the Landlord says they received from the Tenant are internally consistent.
10. The party bringing an application always carries the ultimate burden of proving their application on a balance of probabilities. However, once a landlord provides evidence that rent was not paid, the onus shifts to the Tenant to positively establish that the rent was in fact paid.
11. The Tenant initially stated at the hearing that she thought there were no arrears outstanding, then that there may be some arrears because she was not sure what rent increases there have been, and then that she was not sure what was outstanding. The Tenant was asked what additional payments she has made that were not listed on the Landlord's list of payments and the Tenant was not able to list any missing payments.
12. However, the Tenant stated that the rent deposit they paid at the start of their tenancy was actually \$8,043.00 not the \$2,850.00 that they Landlord claims, and that additional money should be put towards the arrears. The Landlord testified that they did collect \$8,043.00 at the start of the tenancy but that was used for the first 25 days of the tenancy, plus the first full month, and then the rest is the last month's rent deposit. The Tenant indicated that

prior to the hearing she never mentioned to the Landlord that she thinks the Landlord is holding this additional money. I find on a balance of probabilities that the Landlord is only holding a last month's rent deposit, and no additional money. This is because I found the Tenant's testimony regarding this additional deposit to be uncredible. It seems unlikely that the Tenant would think they are owed \$5,193.00 by the Landlord and not raise it any point prior to the hearing.

13. As the Tenant did not satisfy me on a balance of probabilities that she has paid more than what is being alleged by the Landlord, and I have already found the Landlord's figures to be reliable and internally consistent, I find on a balance of probabilities that the Tenant has paid \$37,368.00 to the Landlord since the application was filed and that the rent arrears owing to March 31, 2023 are \$1,608.00.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. The Tenant requested relief from eviction in the form of a repayment plan. The Tenant stated that her monthly income is \$4,415.00 and that she can afford to pay \$200.00 towards the arrears each month. The Landlord was opposed to a repayment plan because this is not the first L1 application they have brought during this tenancy, the Landlord believes the Tenant has had the ability to pay the full rent but has chosen not to, and rent payments are consistently paid late.
16. 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 grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act. In making that determination I have considered that the Tenant has a child who lives with her and goes to school in the area and that based on the Tenant's monthly income she can afford to pay off the arrears within a reasonable period. To address the Landlord's concerns that the Tenant will not abide by the repayment schedule, this order will be subject to an enforcement clause under section 78 of the Act. That clause means that if the Tenant breaches the terms of this order the Landlord can apply for an ex-parte eviction order.

It is ordered that:

1. The Tenant shall pay to the Landlord \$1,794.00 for arrears of rent up to March 31, 2023 and costs.
2. The Tenant shall pay to the Landlord the amount set out in paragraph 1 in accordance with the following schedule:
 1. On or before May 15, 2023 a payment on \$200.00;
 2. On or before June 15, 2023 a payment on \$200.00;
 3. On or before July 15, 2023 a payment on \$200.00;
 4. On or before August 15, 2023 a payment on \$200.00;

5. On or before September 15, 2023 a payment on \$200.00;
 6. On or before October 15, 2023 a payment on \$200.00;
 7. On or before November 15, 2023 a payment on \$200.00;
 8. On or before December 15, 2023 a payment on \$200.00;
 9. On or before January 15, 2024 a final payment of \$194.00
3. The Tenant shall also pay to the Landlord new rent on time and in full as it comes due and owing for the period May 1, 2023 to January 1, 2024, or until the arrears are paid in full, whichever date is earliest.
 4. If the Tenant fails to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenant to the Landlord pursuant to paragraph 1 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenant, apply to the LTB within 30 days of the Tenant's breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant and requiring that the Tenant pay any new arrears, NSF fees and related charges that became owing after March 31, 2023.

April 12, 2023

Date Issued

Amanda Kovats

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.