



Order under Section 69 Residential Tenancies Act, 2006

Citation: Skylink Land Limited v Mathurin, 2023 ONLTB 30308

Date: 2023-04-12

File Number: LTB-L-053185-22

In the matter of: 2166 WELLESLEY AVE
WINDSOR ON N8W2E7

Between: Skylink Land Limited Landlord

And

Jocelyn Mathurin Tenant

Skylink Land Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Jocelyn Mathurin (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 30, 2023.

The Landlord's legal representative, Trevor Sheib, attended the hearing.

The Tenant also 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 \$1,425.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$46.85. This amount is calculated as follows: \$1,425.00 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 March 31, 2023 are \$11,400.00.
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 \$1,425.00 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.
9. Interest on the rent deposit, in the amount of \$28.79 is owing to the Tenant for the period from June 9, 2022 to March 30, 2023.

Landlord's Application

10. The arrears are not in dispute.
11. The position of the Landlord is that the Tenant has not made any payment towards the arrears or made any payment on her lawful rent since the application was filed with the Board in September 2022.
12. The Landlord sent out letters for offers of repayment but the Tenant did not respond or commit to the offers the Landlord and the Tenant had discussed.
13. Since early discussions of payment arrangements the Landlord has not received contact from the Tenant for months, and with no payments since the application, the arrears are accruing quickly and the Landlord is seeking a standard order for eviction and payment of the arrears.
14. The position of the Tenant is that she has had 3 issues to deal with that have impacted her ability to pay her rent. The Tenant testified that she contracted covid and tested positive on August 4, 2022 and due to complications did not return to work until October 17, 2022. During that time the Tenant was not receiving any supplemental income from her employer, Canada Post, due to an issue with her benefits. Her claim was later approved on December 20, 2022.
15. The Tenant suffered a death in the family, her brother passed away October 17, 2022 and the Tenant had to fly to Florida to take care of the funeral arrangements and her brother's personal affairs.
16. The Tenant suffered a work place injury on December 7, 2022 and was off work until December 13, 2022.
17. The Tenant testified she was receiving only a small amount of income, just enough to live, most of the period from August 4, 2022 to the time her short term disability claim was approved on December 20, 2022.

18. In addition to the above mentioned issues the Tenant is an employee of Canada Post and was employed at the time as a “floater” when she was working This position was not full time and is a position that covers other employee vacancies giving her approximately 4 hours a week of work.
19. As of the day of the hearing the Tenant testified, she has since been moved to full time employment.
20. The Tenant requested to submit a repayment plan to the Board for consideration of relief from eviction.

Relief From Eviction

21. The Tenant submitted a repayment plan for the Board’s consideration for relief of eviction. The Tenant submitted she could pay \$1,000.00 every month, starting in April 2023 until the arrears are paid.
22. In order to determine if a payment plan was viable to preserve tenancy and allow the Landlord to receive payment for arrears in a reasonable time, and receive the lawful rent, the Tenant agreed to submit financial evidence for my consideration.
23. The Tenant testified that since moving to full time employment her take home pay after taxes per month is \$3,200.00 After the Tenant submitted her monthly expenses, it was determined that the Tenant’s expenses amounted to \$2,515.00 per month, leaving only \$685.00 surplus to put towards the arrears after her lawful rent is paid.
24. The Tenant restated she could make the payments work, but the information she provided suggests otherwise.
25. I considered allowing the Tenant to lower the repayment plan to \$650.00 arrears payments per month based on her financial submissions which would equate to an 18 month repayment plan.
26. I also considered that the tenancy started in June 2022, and the Tenant fell into arrears immediately. Granted the Tenant had experienced some set backs with health and family, but when the Tenant did receive her short term benefits claim December 20, 2022 there was no attempt to contact the Landlord or make any payments in good faith.
27. The Tenant has lived in the rental unit since June 2022 according to the Landlord’s application she has been in arrears for 8 of her 10 months of tenancy, with no payments made even when she had the funds on December 20, 2022. I am not persuaded by the Tenant’s submission of a being able to make a repayment plan, of \$1,000.00 work, and given that she would have to reduce her payments to \$650.00 a month this would further delay the repayment to the Landlord.
28. The Tenant submitted that should she have to move she would need until May 31, 2023.

29. Given the quantum of the arrears and the fact the Landlord has received no money since the application, I considered the prejudice to the Landlord on a long delay order for repayment of the arrears. Weighing the submissions of the Landlord against the Tenant's submissions on her health, the loss of her brother and her part time hours of work, I am granting the Landlords request for eviction, however I find it not unreasonable to allow the Tenant time to find alternative housing and thereby grant a delay of eviction.
30. 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 postpone the eviction until May 31, 2023 pursuant to subsection 83(1)(b) of the Act.
31. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
32. This order contains all reasons for the determinations and order made. No further reasons will be issued.

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:
 - \$13,011.00 if the payment is made on or before April 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$14,436.00 if the payment is made on or before May 31, 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 31, 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 31, 2023
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$10,112.71. 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 \$46.85 per day for the use of the unit starting March 31, 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 23, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 24, 2023 at 5.00% 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 31, 2023, then starting June 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 June 1, 2023.

April 12, 2023

Date Issued

Greg Brocanier

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 December 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	\$12,825.00
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	\$13,011.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before May 31, 2023

Rent Owing To May 31, 2023	\$14,250.00
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	\$14,436.00

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

Rent Owing To Hearing Date	\$11,380.50
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	- \$1,425.00
Less the amount of the interest on the last month's rent deposit	- \$28.79

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	\$10,112.71
Plus daily compensation owing for each day of occupation starting March 31, 2023	\$46.85 (per day)