



Order under Section 69 Residential Tenancies Act, 2006

Citation: Neves v Dodson, 2023 ONLTB 30130

Date: 2023-04-12

File Number: LTB-L-048651-22

In the matter of: APT 6, 324 LAUDER AVE YORK
ON M6E3H6

Between: Manuel Vidal Landlords
Rosa Neves

And

Michael Dodson Tenant

Manuel Vidal and Rosa Neves (the 'Landlords') applied for an order to terminate the tenancy and evict Michael Dodson (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 second-named Landlord, the Landlords' Representative, Carlos Oliveira, and the Tenant attended the hearing.

Determinations:

1. The Landlords served the Tenant with a valid Notice to End Tenancy Early for Nonpayment 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 \$1,500.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$49.32. This amount is calculated as follows: \$1,500.00 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 \$24,500.00.

7. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlords collected a rent deposit of \$1,500.00 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 \$38.24 is owing to the Tenant for the period from September 13, 2020 to March 28, 2023.
10. The Tenant submitted that there were several maintenance issues in the rental unit however the Tenant did not submit any evidence or a summary of claims to be made at the hearing prior to the start of the hearing. Therefore, these issues will not be considered in this application, however the Tenant may file his own application with the Board regarding these issues.
11. The Tenant testified that he had been laid off when the COVID crisis began, and shortly afterwards became clinically depressed. The Tenant testified that he had only recently become gainfully employed and was prepared to make payment towards the arrears, however he would need a few months because he had other debts that he had to deal with first.
12. The Tenant testified that he has a young child where he has custody on weekends and on occasional weekdays. The Tenant did not state whether his child's school was close to the rental unit.
13. The Landlord testified that the Tenant had been seen coming and going from work for months, however, the Landlord had not received any rent payments from the Tenant since the application was filed. The Tenant did not challenge this allegation at the hearing.

Section 83

14. Section 83(2) of the *Residential Tenancies Act, 2006*, (the 'Act') states:

(2) If a hearing is held, the Board shall not grant the application unless it has reviewed the circumstances and considered whether or not it should exercise its powers under subsection (1).

15. Section 83(1) of the Act states:

83 (1) Upon an application for an order evicting a tenant, the Board may, despite any other provision of this Act or the tenancy agreement,

- (a) refuse to grant the application unless satisfied, having regard to all the circumstances, that it would be unfair to refuse; or
- (b) order that the enforcement of the eviction order be postponed for a period of time.

16. Based on the evidence before me, I find that it would not be unfair to grant the Landlords' application. I find that the Tenant's failure to pay any rent since the application was filed to greatly prejudice the Landlord.
17. However, in consideration of the Tenant's custody arrangement, the eviction order will be postponed for a short period of time.
18. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would not be unfair to postpone the eviction until April 30, 2023, pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

1. The tenancy between the Landlords 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 Landlords or to the LTB in trust:**
 - \$26,186.00 if the payment is made on or before April 30, 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 30, 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 30, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlords \$23,028.72. 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 Landlords owe 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 Landlords compensation of \$49.32 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 Landlords 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.
8. The Landlords 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 30, 2023, then starting May 1, 2023, the Landlords 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 Landlords on or after May 1, 2023.

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15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

April 12, 2023

Date Issued

Robert Brown

Member, Landlord and Tenant Board

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 30, 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

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**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	\$26,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlords since the application was filed	- \$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	\$26,186.00

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

Rent Owing To Hearing Date	\$24,380.96
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlords since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$1,500.00
Less the amount of the interest on the last month's rent deposit	- \$38.24
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlords	\$23,028.72
Plus daily compensation owing for each day of occupation starting March 29, 2023	\$49.32 (per day)

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