



Order under Section 69 Residential Tenancies Act, 2006

Citation: Homestead Land Holdings Limited v Hopkins, 2023 ONLTB 28957

Date: 2023-04-06

File Number: LTB-L-013558-22

In the matter of: 708, 212 Davis Drive
Newmarket ON L3Y0C2

Between: Homestead Land Holdings Limited Landlord

And

Elysse Leffell Tenants
Tyler Hopkins

Homestead Land Holdings Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Elysse Leffell and Tyler Hopkins (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard *de novo* by videoconference on March 24, 2023.

The Landlord's Legal Representative Lee-Anne Thibert and the Tenants attended the hearing.

Preliminary issue:

1. The Tenants were each present on their own behalf, participating in the virtual hearing from different locations.
2. The Tenant Elysse Leffell requested an adjournment on the basis that she only learned of this hearing on the eve of the hearing via email from the Tenant Tyler Hopkins.
3. The Tenant Elysse Leffell indicated that the Tenants were the subject of a no contact order, and that there was a hearing pending in relation to the issues that gave rise to the no contact order. The Tenant Elysse Leffell requested an adjournment till after that hearing date.
4. The Landlord opposed this request on the basis that this is a hearing *de novo*, and that the arrears of rent are significant.
5. The Landlord and the Tenant Elysse Leffell were directed to a private break-out room to determine if section 47.2 of the Act applied in the circumstances. On their return the Landlord advised that the Tenant Elysse Leffell had not provided any notice as required by this section of the Act. Further, the Landlord would not consent to remove the Tenant Elysse Leffell from the Tenancy.

6. The Tenant Elysse Leffell indicated that she had vacated the rental unit around mid-January 2023, and that she had no intention to return to the rental unit.
7. The Tenants had not advised the Landlord that the Tenant Elysse Leffell had vacated the rental unit prior to the hearing.
8. A copy of the “no contact order” was not provided to the Board. Based on the information provided it is fair to conclude that the order may be a recognizance order/peace bond that sets out conditions to keep the peace and be of good behaviour.
9. Section 23 (1) of the Statutory Powers Procedures Act (the ‘Act’), permits the Board to make such orders or give such directions in proceeding before it as it considers proper to prevent abuse of proceeding. An adjournment is a delay that may be viewed an abuse of process to frustrate a Landlord’s efforts to seek a remedy for the non-payment of rent.
10. Section 204(1) of the Act provides that the Board may include in an order whatever condition it considers fair in the circumstances.
11. Section 183 of the RTA directs the Board to "adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and to be heard on the matter."
12. I have reviewed the Board Interpretation Guideline 1, Adjourning and Rescheduling Hearings.
13. This application previously came before the Board on September 14, 2023, and because the Member did not issue an order, the Board directed the application to a hearing *de novo*. The Board is unable to consider the oral record from that hearing, although any previous submissions by the parties can be relied on at a hearing *de novo*.
14. In all of the circumstances, I determined that it would be fair to amend the recognizance order/peace bond to provide authority for the Tenants to communicate directly or indirectly with each other for the purpose of representing themselves and attending as individuals at the Landlord and Tenant Board proceeding today. This is a standard condition/exception that may typically be found in such recognizance/peace bond orders when the Courts are advised of a Board proceeding, and it would not be fair to adjourn so that the Tenants could seek a variance of this order, before coming back before the Board at some time in the future, particularly since this is a hearing *de novo*.
15. The Tenants were advised, that in doing so, they would be addressing the Tribunal and not addressing each other. Each would be permitted to ask questions of the Landlord, and to make their own submissions.
16. For the reasons set out above, the request for an adjournment was denied.

Determinations:

1. This is a hearing *de novo*.
2. 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.
3. As of the hearing date, only the Tenant Tyler Hopkins was still in possession of the rental unit.
4. The lawful rent is \$1,906.66. It is due on the first day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$62.68. This amount is calculated as follows: $\$1,906.66 \times 12$, divided by 365 days.
6. The Tenants have paid \$18,170.00 to the Landlord since the application was filed.
7. The rent arrears owing to March 31, 2023, are \$18,289.57.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$1,900.02 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.
10. The Tenants agreed with the amount of arrears owing.
11. The Tenants requested permission to raise issues in accordance with Section 82(1) of the Act. However, the Tenants confirmed that they did not comply with Section 82(2) to provide advance written notice to the Landlord of their intention to raise any issue at this hearing.
12. As a result, the Tenants were not permitted to raise issues. The Tenants may submit their own application to the Board to pursue any claims in this regard.
13. The Board did canvass the Tenants on the nature of the issues so that consideration could be given in accordance with Section 83(3) (a) to determine if the Landlord is in a serious breach of the Landlord's obligations under the Act.
14. In all the circumstances, having considered the submissions of each of the Tenants, I was not satisfied that the Landlord is in a serious breach of the Landlord obligations under the Act. This is not a finding that the Landlord has not breached a section under the Act, only that any such breach is not serious such as to warrant the Board to refuse the eviction.
15. The Tenants did make submissions regarding their circumstances, that they had made efforts to repay the arrears although they were laid off and unemployed. They were hoping that the Landlord would consider a repayment plan.

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.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$20,382.23 if the payment is made on or before April 17, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after April 17, 2023, but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
4. **If the Tenants does not pay the amount required to void this order the Tenants must move out of the rental unit on or before April 17, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$16,173.21. 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 Tenants shall also pay the Landlord compensation of \$62.68 per day for the use of the unit starting March 25, 2023, until the date the Tenant moves out of the unit.
7. If the Tenants does not pay the Landlord the full amount owing on or before April 17, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 18, 2023, at 6.00% annually on the balance outstanding.

8. If the unit is not vacated on or before April 17, 2023, then starting April 18, 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 18, 2023.

April 6, 2023
Date Issued

Robert Patchett
Vice Chair, 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 18, 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 17, 2023

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| Rent Owing To April 30, 2023 | \$38,366.23 |
| Application Filing Fee | \$186.00 |
| NSF Charges | \$0.00 |
| Less the amount the Tenant paid to the Landlord since the application was filed | - \$18,170.00 |
| 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 | \$20,382.23 |

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

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|--|----------------------|
| Rent Owing To Hearing Date | \$36,057.23 |
| Application Filing Fee | \$186.00 |
| NSF Charges | \$0.00 |
| Less the amount the Tenant paid to the Landlord since the application was filed | - \$18,170.00 |
| 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 | - \$1,900.02 |
| Less the amount of the interest on the last month's rent deposit | - \$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 amount owing to the Landlord | \$16,173.21 |
| Plus daily compensation owing for each day of occupation starting March 25, 2023 | \$62.68 (per day) |