



Order under Section 69 Residential Tenancies Act, 2006

Citation: Bick Properties Inc v Thornington, 2023 ONLTB 29881

Date: 2023-04-05

File Number: LTB-L-042239-22

In the matter of: B7, 428 Bellevue Street
PETERBOROUGH ON K9H5J8

Between: Bick Properties Inc Landlord

And

Susan Thornington Tenant

Bick Properties Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Susan Thornington (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 1, 2023.

The Landlord's agent, N. Bick-Kelso, and the Tenant attended the hearing. The Tenant spoke to Tenant Duty Counsel prior to the hearing.

Determinations:

1. The Tenant requested an adjournment because she said that she was only aware of the hearing for a day or two, and she required more time to get a legal representative.
2. The Landlord's agent opposed an adjournment because they said that the Tenant would have been aware of the application since the Landlord filed the application in August 2022, the notice of hearing was emailed to both parties in January 2023, and the Landlord served their update on February 20, 2023. She said that she has had no communication from the Tenant.
3. I denied the adjournment request because the Tenant was deemed to have been served the notice of hearing by the Board on January 13, 2023, and she therefore had ample time

before the hearing on March 1, 2023, to obtain legal assistance. The Tenant received the N4 notice of termination in June 2022, and she has been in arrears for at least 8 months. I found that the Tenant had sufficient information, as well as, sufficient time to prepare for the hearing so that an adequate hearing could be held. It is open for a Tenant to find legal representation for a hearing, but it is not an absolute right. There was no evidence before me that the Tenant had made any reasonable efforts at all to find a legal representative prior to hearing, despite being aware that she was in arrears for a lengthy period of time.

4. 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.
5. As of the hearing date, the Tenant was still in possession of the rental unit.
6. The lawful rent is \$991.00. It is due on the 1st day of each month.
7. Based on the Monthly rent, the daily rent/compensation is \$32.58. This amount is calculated as follows: $\$991.00 \times 12$, divided by 365 days.
8. The Tenant has paid \$3,540.00 to the Landlord since the application was filed.
9. The rent arrears owing to March 31, 2023 are \$5,228.36.
10. The Landlord collected a rent deposit of \$966.92 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.
11. Interest on the rent deposit, in the amount of \$22.19 is owing to the Tenant for the period from April 1, 2022 to March 1, 2023.
12. The Tenant requested a payment plan to pay off the arrears in 6 months. She said that she has been employed as a nurse in long term care, with a contract for at least 75 hours bi-weekly, at a salary of \$41.00 per hour. She was unable to explain why she has been unable to pay the rent on an income of approximately \$6,150.00 per month before tax, except to say that she had other bills, and she is paying off a bankruptcy. The Tenant had no documentary evidence of her income or bills, or any other expenses, before the Board.
13. The Tenant said that she is now able to pay the rent going forward, as well as pay off the arrears in six months because she has picked up more hours.
14. The Tenant said that she has lived in the rental unit for 12 years, and she now lives with her daughter who is unemployed. She said that she fell behind in the rent because of Covid. The Tenant also said that she looked for other places to live, but it is difficult to find a place within her income that is appropriate.
15. The Landlord requests a standard termination order because they have no confidence that the Tenant could meet a payment plan. The Landlord's agent said that they were open to payment plans throughout the pandemic, and they negotiated a number of them with other tenants.

16. I find that the Tenant has not provided evidence that proves, on a balance of probabilities, that she is able to pay the rent in full going forward. The Tenant said that she was earning over \$6,000.00 per month, yet she was unable to explain why she only paid \$500.00 in February 2023, and only \$1,700.00 in total towards the rent in the three months before that. The Tenant had no documentary evidence of any change in circumstances that would permit her to pay the rent in full going forward, as well as pay \$900.00 per month towards the arrears in the next six months. She said that she fell behind during Covid, however she did not explain how she, as a medical professional, was not earning money during the pandemic. Consequently, I find that the evidence demonstrates that the Tenant does not have sufficient income to pay the rent in full.
17. I have considered all of the disclosed circumstances above in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 and whether the Landlord attempted to negotiate a repayment agreement with the Tenant, and I find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. In particular, the Tenant did not provide credible evidence, nor any documentation, to demonstrate that she can pay the rent in full and on time going forward. The arrears continue to increase each month, and it is prejudicial to the Landlord for the tenancy to continue. However, the Tenant has lived in the rental unit for a long time, and she has very particular requirements for her next accommodation. Therefore, I find she needs more time to find a new place to live, and it would not be unfair to postpone the eviction until May 31, 2023 pursuant to subsection 83(1)(b) of the Act.

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:**
 - \$6,219.36 if the payment is made on or before April 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$7,210.36 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. The Tenant shall also pay the Landlord compensation of \$32.58 per day for the use of the unit starting March 2, 2023 until the date the Tenant moves out of the unit.
6. If the Tenant does not pay the Landlord the full amount owing on or before May 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 1, 2023 at 6.00% annually on the balance outstanding.
7. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
8. 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.
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 June 1, 2023.

April 5, 2023

Date Issued

Nancy Morris

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.

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	\$9,759.36
Application Filing Fee	\$0.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,540.00
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	\$6,219.36

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	\$10,750.36
Application Filing Fee	\$0.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,540.00
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	\$7,210.36

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

Rent Owing To Hearing Date	\$7,809.94
Application Filing Fee	\$0.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,540.00
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	- \$966.92
Less the amount of the interest on the last month's rent deposit	- \$22.19

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	\$3,280.83
Plus daily compensation owing for each day of occupation starting March 2, 2023	\$32.58 (per day)