



Order under Section 69 Residential Tenancies Act, 2006

Citation: Morreale v Desjardine, 2023 ONLTB 28183

Date: 2023-04-03

File Number: LTB-L-044981-22

In the matter of: 5, 686 MAIN ST E
HAMILTON ON L8M1K5

Between: Sam Morreale Landlord

And

Lauren Desjardine Tenant

Sam Morreale (the 'Landlord') applied for an order to terminate the tenancy and evict Lauren Desjardine (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 13, 2023.

The Landlord, the Landlord's Legal Representative, Kimberly Holleran, the Tenant's Agent, Herman Mol, 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 \$1,250.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$41.10. This amount is calculated as follows: \$1,250.00 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 \$12,500.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.

Section 83 considerations

9. It is mandatory for the Board to consider whether it would be unfair to grant relief from eviction pursuant to s.83 of the Act whenever hearing an application for termination of the tenancy. The Board has the discretion to grant relief under s.83(1)(a) of the Residential Tenancies Act, 2006 (the 'Act') after considering all of the relevant circumstances. The Board must also consider the Landlord's rights.
10. The Tenant testified she is currently on the waiting list for priority social housing as she is terminally ill. She stated she is on the Ontario Disability Support Program and her monthly income does not support the monthly rent. She said she is not in good health nor in a good financial position to move out of her rental unit.
11. The Tenant testified she did not dispute the amount of rent arrears owed however she stated she is unable to pay the monies owed to the Landlord. She requested she be able to stay in her unit until suitable housing can be provided to her.
12. The Landlord is seeking an 11-day standard order. The Landlord testified letters have been given to the Tenant on several occasions with respect to the rent arrears and possible payment plans however the Tenant never responded to these letters.
13. The Landlord's Legal Representative submitted an email from Samantha Chiarelli of Access to Housing as evidence. In this email Ms. Chiarelli wrote:

"I met with Lauren Desjardins and Herman Mol and filled out the required forms for priority housing and forwarded this to Amanda at Access to Housing.

Upon speaking to Lauren's physician he indicated he could not support a palliative form as she was not in the category of being eligible for that status even if her illness was terminal. He indicated that many live with Terminal illness but are not palliative. However she was placed as urgent and special priority for housing.

Access to Housing offered her numerous properties. One in Flamborough that the service provider refused to rent to her due to location. The other properties were refused by Lauren or Herman. This resulted in her file being put in front of a committee. They removed her from the list and their decision can not be overturned and is final.

At this point the housing papers are once again filed but the housing crisis in Hamilton is quite sharp. Even with a urgent priority there is no guarantee to be offered a housing option. It is extremely important that Lauren accepts any housing offered immediately. To date she still is not paying rent to Mr. Morrell."

14. 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. I say this because, based on the evidence adduced at the hearing and on a balance of probabilities, the tenancy is not viable however the extra time will allow the Tenant to find suitable alternative accommodation. The rent arrears are substantial. The Tenant has not paid the rent in over 10 months and her monthly income cannot support her expenses. The Tenant does not have the financial ability to pay what is owed and it is therefore prejudicial to the Landlord for the tenancy to continue.

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:**
 - \$13,936.00 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 Landlord \$11,970.30. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$41.10 per day for the use of the unit starting March 14, 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 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 1, 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 April 30, 2023, then starting May 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 May 1, 2023.

April 3, 2023

Susan Priest

_____ **Date Issued**

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 November 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	\$13,750.00
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
Total the Tenant must pay to continue the tenancy	\$13,936.00

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

Rent Owing To Hearing Date	\$11,784.30
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	- \$
Less the amount of the interest on the last month's rent deposit	- \$0.00
Total amount owing to the Landlord	\$11,970.30
Plus daily compensation owing for each day of occupation starting March 14, 2023	\$41.10 (per day)