



Order under Section 69 Residential Tenancies Act, 2006

Citation: JCD Inc. v Castillo, 2023 ONLTB 27715

Date: 2023-04-03 **File**
Number: LTB-L-047971-22

In the matter of: B 3, 502 HURON ST
TORONTO ON M5R2R3

Between: JCD Inc. Landlord

And

Victor Manuel Castillo Tenant

JCD Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Victor Manuel Castillo (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 15, 2023.

The Landlord's Agent Halina Walkiewicz and the Tenant attended the hearing.

Determinations:

Preliminary Issue: Adjournment request

1. The Tenant requested an adjournment at the start of the hearing because he wanted to raise some s.82 issues and he wanted to make the request to adjourn in person at the hearing. When asked why he did not disclose his issues and evidence before the hearing as required by the Board's Rules, he stated that the Landlord failed to contact him for a payment plan or settlement after the Notice of Hearing was served by the Board. He said he asked the Landlord's Agent for an adjournment on the day of the hearing, but he didn't know she did not have the authority to grant the adjournment or make a settlement with him.
2. The Tenant also testified that he filed a T2 and T6 application against the Landlord a week after the Landlord filed the L1 application and because he doesn't have a hearing date for his applications, he thinks it is prejudicial for him to proceed today because the issues that the Landlord is bringing up for the L1 are tied with his T2/T6 application. However, the Tenant could not explain the relation between the applications.

3. The Tenant also suggested that he needed an adjournment for medical reasons but did provide any details about the medical or other personal issues he has or any medical documentation. The Tenant stated that he has personal and health issues but did not want to disclose anything publicly.
4. The Tenant also raises accessibility and accommodation that he required from the Board to continue with the hearing. He said that he wanted to present an oral request for adjournment rather than a written request.
5. The Landlord's Agent objected to the adjournment request stating that the Tenant had enough time to serve and file his s.82 issues disclosure with the Board. He has been giving notices to the Landlord since March 2022 stating he will move out but has not moved out or paid rent since June 2022. The Tenant wanted a settlement from the Landlord back in April 2022 but was dissatisfied with what was offered to him. He had a roommate that he collected half the rent from but did not pay the Landlord anything. It is prejudicial to the Landlord to adjourn because the Tenant has not made a single payment towards rent in ten months. The Landlord would be prejudiced if the adjournment was granted.
6. After I denied the adjournment request the Tenant then asked that the hearing format to be changed to a written hearing because he thought he would be able to express himself better since at the oral hearing he was not getting an opportunity to speak freely and that was denying him access to justice and fairness. I do not find that a written hearing is required in these circumstances as an accommodation or that proceeding with an electronic hearing would cause the Tenant significant prejudice. Therefore, the request to change the hearing format to written was denied

Rent Arrears

7. 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.
8. As of the hearing date, the Tenant was still in possession of the rental unit.
9. The lawful rent is \$1,250.00. It is due on the 1st day of each month.
10. 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.
11. The Tenant has not made any payments since the application was filed.
12. The rent arrears owing to March 31, 2023 are \$11,875.00.
13. The Tenant asserted that he stopped paying rent because his unit is only 40% livable due to mold and there was a pending complaint with the city to test the same. He testified that he went to live with a friend for a month but came back to the unit after that. As these are issues raised by the Tenant in his own application and the Tenant did not provide advance

disclosure of the issues and evidence 7 days in advance of the hearing as required by section 82(2) of the *Residential Tenancies Act, 2006* ("Act") and Board Rule of Procedure 19.4, I will not be addressing these issues in this order.

14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. The Landlord collected a rent deposit of \$1,250.00 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.
16. Interest on the rent deposit, in the amount of \$34.35 is owing to the Tenant for the period from August 2, 2021 to March 15, 2023.

Relief from eviction

17. 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.
18. The Tenant testified that he is part-time undergraduate student and a part-time worked who works only 10-hours a week. He is also on ODSP. He currently has no roommates although he agreed that he had previously received rent from a roommate. He also stated that he wants to leave the rental unit, but he wants the Landlord to make a settlement with him. He said the rental unit is causing him health issues, but he did not mention what issues he had. He was upset that he had to miss school and two hours of work due to this hearing. He states that the rental unit affects his mental, physical, and spiritual well-being. He testified that he is into holistic treatment like meditation to help with his anxiety and he cannot meditate in his apartment and goes outside sometimes to do the same.
19. He stated that his belongings are packed and ready to move to a shelter to get out of the rental unit. His social worker is ready to find him a shelter in fifteen days
20. The Tenant asked the Board to order him to pay 40% of the rent arrears in an Interim order until his application is heard because this order may cause him financial distress. I denied the request.

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:**

- \$12,061.00 if the payment is made on or before March 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$13,301.00 if the payment is made on or before April 15, 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 15, 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 15, 2023**
 5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$10,143.15. 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 \$41.10 per day for the use of the unit starting March 16, 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 15, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 16, 2023 at 6.00% annually on the balance outstanding.
 8. If the unit is not vacated on or before April 15, 2023, then starting April 16, 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 16, 2023.

April 3, 2023

Date Issued

Sheena Brar

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 October 8, 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 March 31, 2023

Rent Owing To March 31, 2023	\$11,875.00
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	\$12,061.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before April 15, 2023

Rent Owing To April 30, 2023	\$13,125.00
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	\$13,301.00

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

Rent Owing To Hearing Date	\$11,241.50
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	- \$1,250.00
Less the amount of the interest on the last month's rent deposit	- \$34.35
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	\$10,143.15
Plus daily compensation owing for each day of occupation starting March 16, 2023	\$41.10 (per day)