



Order under Section 69 Residential Tenancies Act, 2006

Citation: Nguyen v Lorenz, 2023 ONLTB 27445

Date: 2023-03-28

File Number: LTB-L-003734-22

In the matter of: 1, 1263 COLLEGE STREET
TORONTO ON M6H1C5

Between: Linda Nguyen and Viet Nguyen Landlord

And

Cynthia Lorenz Tenant

Linda Nguyen and Viet Nguyen (the 'Landlord') applied for an order to terminate the tenancy and evict Cynthia Lorenz (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 15, 2023 at 1:00 pm.

The Landlord Representative Arashdeep Grewal, the Landlord and the Tenant attended the hearing.

Preliminary Issue:

1. At the outset of the hearing the Landlord Representative requested that the Tenant's evidence not be admitted because the Landlord was not provided with disclosure until March 11, 2023, 4 days prior to the hearing date and not had time to review the evidence thoroughly or in its entirety. She submitted that the Tenant wouldn't be prejudiced given the Tenant could still file their own applications with regards to Tenant rights.
2. In response the Tenant submitted that they were unfamiliar with the Board's rules and procedures, and it was their intent to dispute the amount of arrears owing as it was their belief that the rent claimed to be owing was in fact paid.
3. The Tenant's evidence in question, in part, concerns issues that may be raised by a tenant during a rent arrears proceeding under section 82 of the *Residential Tenancies Act, 2006* ("Act") which states:

82 (1) At a hearing of an application by a landlord under section 69 for an order terminating a tenancy and evicting a tenant based on a notice of termination under

section 59, the Board shall permit the tenant to raise any issue that could be the subject of an application made by the tenant under this Act if the tenant,

- (a) complies with the requirements set out in subsection (2); or
- (b) provides an explanation satisfactory to the Board explaining why the tenant could not comply with the requirements set out in subsection (2). 2020, c. 16, Sched. 4, s. 16.

(2) The requirements referred to in subsection (1) are the following:

1. The tenant shall give advance notice to the landlord of the tenant's intent to raise the issue at the hearing.
 2. The notice shall be given within the time set out in the Rules.
 3. The notice shall be given in writing and shall comply with the Rules.
4. Board Rule of Procedure 19.4 states a tenant who wishes to raise section 82 issues must provide the other parties and the LTB with the following at least 7 days before the hearing:
- a written description of each issue the tenant intends to raise; and
 - a copy of all documents, pictures and other evidence that the tenant intends to rely upon at the hearing.
5. Having given consideration to the circumstances before me and have conducted a cursory review of the Tenant's evidence package, which revealed the issues they intended to raise range from allegations of the Landlord retaliating against her for subletting, that the rent was in fact paid, the Landlord colluding with the subtenant, maintenance issues and harassment, I directed that I would only allow evidence in support of the Tenant's claim that the rent alleged owing was in fact paid. Any other issues the Tenant wants to raise can be the subject of their own separate applications. Given the volume of the disclosure and breadth of topics intended to be raised I was satisfied that to allow the Tenant to present their evidence without the Landlord having the adequate time to review and prepare a response would, in addition to being inconsistent with Rule 19.4, be prejudicial to the Landlord.

Determinations:

6. The Landlord served the Tenant with a 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.
7. As of the hearing date, the Tenant was still in possession of the rental unit.
8. The lawful rent is \$1,373.10. It is due on the 1st day of each month.

9. Based on the Monthly rent, the daily rent/compensation is \$45.14. This amount is calculated as follows: $\$1,373.10 \times 12$, divided by 365 days.
10. The Tenant has not made any payments since the application was filed.
11. The Landlord's evidence is that the rent arrears owing to March 31, 2023 are \$1,323.10.
12. The Tenant disputed the amount or arrears owing, claiming that their sub-tenant, "Enisa Johnson" (EJ), had paid the rent for September 2021, contrary to the Landlord's evidence.
13. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
14. The Landlord collected a rent deposit of \$1,339.61 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.
15. Interest on the rent deposit, in the amount of \$17.07 is owing to the Tenant for the period from January 1, 2022 to March 15, 2023.

Tenant's Testimony

16. In support of their claim that EJ had paid the September 2021 rent, the Tenant entered in evidence an email dated August 5, 2021 from EJ to the Landlord in which EJ states that if the Tenant were evicted before September 01, 2021 she would send a \$850.00 rent payment directly to the Landlord and in the interim would like to seek a new lease directly with the Landlord as it was her understanding that she had entered into an illegal lease agreement with the Tenant.
17. The Tenant then testified that it was her practice to sublet her apartment and that she would collect rent from her sub-tenants and then pay the rent directly to the Landlord. However, it was also her position that EJ had failed to pay the September 2021 rent to her and since that time had entered into a lease agreement with the Landlord and moved into a separate unit on the upper floor. It was also her opinion that EJ and the Landlord were colluding against her to have her evicted.

Landlord's Testimony

18. The Landlord Representative submitted that despite whatever transpired between the Tenant and their sub-tenant, the Tenant was still responsible for paying the full rent to the Landlord in accordance with section 97(4) (a) of the Residential Tenancies Act, 2006 " (the "Act") which states if a tenant has sublet a rental unit to another person, the tenant remains entitled to the benefits, and is liable to the landlord for the breaches, of the tenant's obligations under the tenancy agreement or this Act during the subtenancy.

19. The Landlord further testified that at no time did he accept any rent directly from the Tenant's sub-tenants and that it wasn't until July 31, 2021 he had learned that the Tenant had sublet her apartment to EJ and two other subtenants, each of which were paying her \$850.00 a month. He further testified that he had only learned of the subtenancy due to the Tenant illegally locking EJ out of the apartment on July 31, 2021 and he was required to change the locks back.

Analysis

20. Having given consideration to the testimony and evidence before me, for the following reasons, I do not find that the Tenant has established that the September 2021 rent was paid by EJ to the Landlord.
21. Firstly, the email the Tenant entered in evidence doesn't expressly state that EJ paid September 2021 rent to the Landlord. The email states that EJ had proposed paying the September 2021 rent in the event that the Tenant had been evicted, which she had not.
22. When asked to identify any specific evidence of the disputed payment, the Tenant responded by making unsubstantiated allegations against the Landlord or alleging that EJ and the Landlord were colluding against her. When that failed, she tried to claim she was never properly served with the N4 Notice.
23. In response to this allegation the Landlord testified that he had placed the N4 on the kitchen table as supported by the Certificate of Service (COS) entered in evidence.
24. The Tenant then testified that she rarely attended the rental unit and never saw or was informed of the N4 Notice by any of her subtenants. Consequently, given the Tenant didn't raise this issue at outset of the hearing, never provided or introduced evidence that she never had access to the rental unit I don't accept her explanation and I am satisfied on the balance of probabilities that the N4 Notice was validly served.
25. Thirdly, having reviewed the emails from the Tenant to the Landlord respecting issues with EJ, I see nothing to confirm that the rent was ever paid. In fact, there was an email from the Tenant to the Landlord dated September 03, 2021 in which the Tenant admitted to not paying the rent and acknowledging that EJ hadn't either.
26. Finally, I am in agreement with the Landlord Representative in that regardless of the issues the Tenant had or has with EJ they do not absolve her of the obligation under the Act to pay the rent that she owes and I am satisfied on the balance of probabilities that she did not pay the September 2021 rent as alleged.

Relief From Eviction

27. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (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.

28. Specifically, given the amount of arrears owing, the fact that the Tenant has continued to pay the rent on time since receiving the N4 Notice, I am satisfied that a delay in eviction to allow the Tenant time to secure the additional funds and maintain the tenancy is warranted.

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:**
 - \$1,509.10 if the payment is made on or before March 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$2,882.20 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. As of the date of the hearing, the amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the arrears of rent, compensation and the cost of filing the application the Landlord is entitled to by \$570.68. See Schedule 1 for the calculation of the amount owing. However, the Landlord is authorized to deduct from the amount owing to the Tenant \$45.14 per day for compensation for the use of the unit starting March 16, 2023 until the date the Tenant moves out of the unit.
 6. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
 7. 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.
 8. 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.

March 28, 2023

Date Issued

Kelly Delaney

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.

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	\$1,323.10
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	\$1,509.10

B. 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	\$2,696.20
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	\$1,509.73

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

Rent Owing To Hearing Date	\$600.86
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	- \$1,339.61
Less the amount of the interest on the last month's rent deposit	- \$17.07
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	(\$570.68)
Plus daily compensation owing for each day of occupation starting March 16, 2023	\$45.14 (per day)

2023 ONL TB 27445 (CanLII)