



Order under Section 69 Residential Tenancies Act, 2006

Citation: Weston Co-Ownership Apartments Inc. v Nurse, 2023 ONLTB 26490

Date: 2023-03-24

File Number: LTB-L-042699-22

In the matter of: 103, 2255 WESTON RD
TORONTO ON M9N1Y5

Between: Weston Co -Ownership Apartments Inc. Landlord

And

Hakeem Nurse (Natalia Nurse) Tenant

The Tenant requested to be referred to as Natalia Nurse and as such that is how I shall refer to her in this order. Weston Co-Ownership Apartments Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Natalia Nurse (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on February 28, 2023.

The Landlord 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 \$1,465.75. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$48.19. This amount is calculated as follows: \$1,465.75 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 February 28, 2023 are \$11,639.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$1,430.00 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.
9. The Tenant testified that she paid first and last twice and the Landlord has not credited her for that. The Tenant had no corroborating evidence in support of this testimony. The party bringing an application always carries the ultimate burden of proving their application on a balance of probabilities. However, once a landlord provides evidence that money was not paid, the onus shifts to the Tenant to positively establish that the rent was in fact paid. I am not satisfied based on the Tenant's testimony alone that she paid first and last twice. Supporting document of this fact would exist in the form of banking records, a receipt etc and the fact that the Tenant was unable to produce that proof, and that the Landlord submits that first and last was only paid once, leads me to believe on a balance of probabilities that first and last was only paid once.
10. Interest on the rent deposit, in the amount of \$27.54 is owing to the Tenant for the period from November 15, 2021 to February 28, 2023.
11. 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 8, 2023 pursuant to subsection 83(1)(b) of the Act. This is because there are two children living in the rental unit. Postponing the eviction will provide the Tenant with time to either pay off the arrears or find new living arrangements.

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:**
 - \$13,290.75 if the payment is made on or before March 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$14,756.50 if the payment is made on or before April 8, 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 8, 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 8, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$10,367.46. 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 \$48.19 per day for the use of the unit starting March 1, 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 4, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 5, 2023 at 5.00% annually on the balance outstanding.
8. If the unit is not vacated on or before April 8, 2023, then starting April 9, 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 9, 2023.

March 24, 2023

Date Issued

Amanda Kovats

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 9, 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	\$13,104.75
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	\$13,290.75

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before April 8, 2023

Rent Owing To April 30, 2023	\$14,570.50
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
Total the Tenant must pay to continue the tenancy	\$14,756.50

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

Rent Owing To Hearing Date	\$11,639.00
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 of the last month's rent deposit	- \$1,430.00
Less the amount of the interest on the last month's rent deposit	- \$27.54
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	\$10,367.46
Plus daily compensation owing for each day of occupation starting March 1, 2023	\$48.19 (per day)

