



Order under Section 69 Residential Tenancies Act, 2006

Citation: Capreit 2 Limited Partnership v Valencia, 2023 ONLTB 26150

Date: 2023-03-20

File Number: LTB-L-042551-22

In the matter of: 1109, 2020 SHEPPARD AVE W
TORONTO ON M3N1A3

Between: Capreit 2 Limited Partnership Landlord

And

Jimmy Franklin Valencia Tenant

Capreit 2 Limited Partnership (the 'Landlord') applied for an order to terminate the tenancy and evict Jimmy Franklin Valencia (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlord also claimed charges related to NSF cheques.

This application was heard by videoconference on February 28, 2023. The Tenant attended the hearing and was assisted by his support worker, Annalee Barrera. The Landlord was represented at the hearing by Geoff Paine.

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 \$1,747.62. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$57.46. This amount is calculated as follows: \$1,747.62 x 12, divided by 365 days.
5. The Tenant has paid \$2,100.00 to the Landlord since the application was filed.

6. The rent arrears owing to February 28, 2023, are \$12,280.00.
7. The Landlord is entitled to \$20.00 to reimburse the Landlord for administration charges and \$5.00 for bank fees the Landlord incurred as a result of 1 cheque given by or on behalf of the Tenant which was returned NSF.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. There is no last month's rent deposit.

Section 83 Considerations

10. The Tenant does dispute the amount of rent arrears. The issue before the Board is whether it is appropriate to grant relief from eviction pursuant to s.83 of the *Residential Tenancies Act 2006*, (the 'Act').
11. According to s. 83 of the Act when the Board hears an application for an order evicting a tenant, the Board must consider whether there are any circumstances that support granting relief from eviction.
12. The Tenant claims he fell into rent arrears because his work with his slow. The Tenant submits his income will increase this month and he will be able to pay \$600.00 a week toward arrears. I do not find this to be the case.
13. The Tenant has not substantiated the increase in his income. Further, the Tenants proposed payment plan seemed to be based on picking random numbers, rather than a realistic payment plan that could preserve the tenancy.
14. When the Tenant was questioned about his finances by the Landlord's representative it became apparent the Tenant was living above his means.
15. For these reasons, I do not find circumstances warrant denying eviction.
14. I have considered the fact the Tenant has applied for two government programs that may assist him with paying off the rent arrears. Accordingly, I find a short delay in eviction is warranted to see if any assistance be available to the Tenant to pay off the arrears.
15. I have considered all 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.

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:**

- \$14,238.62 if the payment is made on or before March 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$15,986.24 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 \$12,491.00. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application and unpaid NSF charges. See Schedule 1 for the calculation of the amount owing.
 6. The Tenant shall also pay the Landlord compensation of \$57.46 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 March 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 1, 2023, at 5.00% annually on the balance outstanding.
 8. 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.
 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 May 1, 2023.

March 20, 2023

Date Issued

Bryan Delorenzi

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	\$16,127.62
Application Filing Fee	\$186.00
NSF Charges	\$25.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,100.00
Total the Tenant must pay to continue the tenancy	\$14,238.62

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	\$17,875.24
Application Filing Fee	\$186.00
NSF Charges	\$25.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,100.00
Total the Tenant must pay to continue the tenancy	\$15,986.24

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

Rent Owing To Hearing Date	\$14,380.00
Application Filing Fee	\$186.00
NSF Charges	\$25.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,100.00
Total amount owing to the Landlord	\$12,491.00
Plus daily compensation owing for each day of occupation starting March 1, 2023	\$57.46 (per day)