



Order under Section 69 Residential Tenancies Act, 2006

Citation: The Effort Trust Company v Jenson, 2023 ONLTB 26357

Date: 2023-03-17

File Number: LTB-L-013572-22

In the matter of: 801, 4 VILLAGE GREEN
STONEY CREEK ON L8G2J2

Between: The Effort Trust Company Landlord

And

Kyle Jenson Tenant

The Effort Trust Company (the 'Landlord') applied for an order to terminate the tenancy and evict Kyle Jenson (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 September 14, 2022.

The Landlord's representative Kimberly Holleran 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 \$1,062.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$34.92. This amount is calculated as follows: \$1,062.00 x 12, divided by 365 days.
5. The Tenant has paid \$5,310.00 to the Landlord since the application was filed.
6. The rent arrears owing to September 30, 2022 are \$4,256.00.

7. The Landlord is entitled to \$0.00 to reimburse the Landlord for administration charges and \$40.00 for bank fees the Landlord incurred as a result of 2 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. The Landlord collected a rent deposit of \$1,029.00 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.
10. Interest on the rent deposit, in the amount of \$105.44 is owing to the Tenant for the period from December 1, 2015 to September 14, 2022.
11. The Tenant does not agree with the amount of rent arrears calculated by the Landlord. The Tenant testified that while he did not pay all the rent owed to the Landlord, he did make partial payments and only owed the rent for April 2022 and May 2022. The Tenant also claims that the Landlord did not provide him with a copy of the N4 Form and L1 application before the hearing. The Tenant submitted his bank statement to Board as evidence to support his claim, and it shows that the Tenant has paid \$5,310.00 to the Landlord since the application was filed.
12. The Landlord provided documentary evidence of all the payments the Tenants received. The Landlord's documentary evidence consists of a detailed rent ledger and copies of all the Interac payments received from the Tenants. The Landlord's documentary evidence supports the oral evidence at the hearing that the Tenants owe arrears and have paid only \$5,310.00 to the Landlord since the application was filed. The Landlord also provided a copy of the certificate of service showing that the N4 Form was sent to the Tenant by mail on December 14, 2021.
13. On a balance of probabilities, I am satisfied that the Landlord correctly calculated the arrears of rent owed for the rental period of November 2021 to September 2021. In making this finding, I considered the clear, concise and detailed evidence of the Landlord, which establishes the arrears of rent owed. I find the Tenant's evidence was vague and lacked details to establish their claim that the Landlord did not account for all the partial payments of rent they believe they made, which would result in the Landlord's calculations of arrears of rent being incorrect.
14. 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.
15. The Tenant has had an extended period since the hearing to contact the Landlord to discuss rent arrears payment options. Therefore, postponing the eviction under subsection 83(1)(b) would be prejudicial to the Landlord.

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:**
 - \$10,854.00 if the payment is made on or before March 28, 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 March 28, 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 March 28, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$2,774.44. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application and unpaid NSF charges. 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 \$34.92 per day for the use of the unit starting September 15, 2022 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 28, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 29, 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 March 28, 2023, then starting March 29, 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 March 29, 2023.

March 17, 2023

Date Issued

Percy Laryea

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 September 29, 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 28, 2023

Rent Owing To March 31, 2023	\$15,938.00
Application Filing Fee	\$186.00
NSF Charges	\$40.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$5,310.00
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	\$10,854.00

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

Rent Owing To Hearing Date	\$8,992.88
Application Filing Fee	\$186.00
NSF Charges	\$40.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$5,310.00
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	- \$1,029.00
Less the amount of the interest on the last month's rent deposit	- \$105.44
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	\$2,774.44

Plus daily compensation owing for each day of occupation starting September 15, 2022	\$34.92 (per day)
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