



Order under Section 78 Residential Tenancies Act, 2006

Citation: Smith v Hartwick, 2023 ONLTB 25966

Date: 2023-03-17

File Number: LTB-L-079829-22

In the matter of: Front Apt, 73 St. George Street Deseronto
ON K0K1X0

Between: Michelle Smith Landlord

And

Deborah Hartwick Tenant

Michelle Smith (the 'Landlord') applied for an order to terminate the tenancy and evict Deborah Hartwick (the 'Tenant') and for an order to have the Tenant pay the rent they owe because the Tenant did not meet a condition specified in the order issued by the LTB on March 8, 2022 with respect to application TEL-20226-21.

On February 9, 2023 the Board issued an endorsement to the parties directing the application to a hearing as it was not clear on it's face how much the L4 application was seeking in arrears of rent.

This application was heard by way of videoconference on March 6, 2023. The Landlord and the Tenant attended the hearing.

Determinations:

1. The order provides that the Landlord can apply to the LTB under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') without notice to the Tenant to terminate the tenancy and evict the Tenant if the Tenant does not meet certain condition(s) in the order. This application was filed within 30 days of the breach.

2. I find that the Tenant has not met the following condition specified in the order:
 - The Tenant failed to pay to the Landlord \$100.00 for arrears of rent on or before November 1, 2022.
3. The Tenant was required to pay \$901.40 for rent arrears, and the application filing fee in the previous order. The amount that is still owing from that order is \$100.00 and that amount is included in this order. This order replaces order TEL-20226-21

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4. The Tenant disputed the Landlord's allegation that she failed to pay \$100.00 towards the arrears on or before November 1, 2022. However, the Tenant did not submit any receipt of payment, bank records or confirmation from the Landlord that the funds were received. The Landlord denies that any funds were received.
5. In *Mauti v. Gibbs, 2019 ONSC 3355 (CanLII)*, the Divisional Court held at paragraph 27 that while the Landlord bears the burden of proof in a rent arrears application, it is difficult for a landlord to prove a negative (i.e. non-payment of rent). Therefore, ". . .while the ultimate persuasive burden never shifts, once a landlord denies receiving funds, the tenant will have an evidentiary burden or a chance to advance some evidence to positively prove that he or she paid rent."
6. On a balance of probabilities, I find that the Tenant has breached the repayment plan contained in order TEL-20226-21. As stated, the Tenant provided no evidence supporting that a \$100.00 payment was made for the November 1, 2022 due date pursuant to the previous order.
7. The Tenant has paid all new rent that has become due and payable since the prior order was issued and as of March 31, 2023, the Tenant only owes \$100.00 in arrears to the Landlord.

Relief from eviction:

8. 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 grant relief from eviction pursuant to subsection 83(1)(a) of the Act.
9. As of the hearing date, the Tenant only owes to the Landlord \$100.00 in arrears. At the hearing the Tenant testified that she would pay this amount by March 31, 2023. Given the small balance owing and the fact that the Tenant has continued to make ongoing payments

to the Landlord, I find it would not be unfair to deny eviction. The Tenant will however be ordered to repay the Landlord the remaining balance of arrears owing.

It is ordered that:

1. Order TEL-20226-21 is cancelled.
2. The Tenant shall pay to the Landlord \$100.00. This amount represents arrears of rent owing up to March 31, 2023.
3. 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 a simple interest calculated from April 1, 2023 at 5.00% annually on the balance outstanding.

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March 24, 2023

Date Issued

Fabio Quattrociochi
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.