



Order under Section 69 Residential Tenancies Act, 2006

Citation: Reed v Rosen, 2023 ONLTB 19378

Date: 2023-03-09

File Number: LTB-L-070858-22

In the matter of: 1206, 29 QUEENS QUAY E
TORONTO ON M5E0A4

Between:	Wendy Reed	Landlord
	And	
	David Rosen	Tenant

Wendy Reed (the 'Landlord') applied for an order to terminate the tenancy and evict David Rosen (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on February 1, 2023.

The Landlord and the Tenant attended the hearing.

The Landlord, the Landlord's Legal Representative, David Ciobotaru, and the Tenant's Legal Representative, Marshall Yarmus attended the hearing. The Tenant was present in the hearing room, and participated in discussions to resolve the matter with the Landlord and their respective representatives prior to the hearing, but had left the hearing room when the matter was called. As the Tenant was represented at the hearing, the hearing proceeded in the Tenant's absence.

Preliminary Matters:

Last month's rent deposit

1. In their application, the Landlord had indicated that the Landlord was holding a last month's rent deposit of \$10,000.00 which was collected on November 16, 2019, which was prior to the Landlord's purchase of the rental unit. At the hearing, the Landlord's Legal Representative testified that there was no last month's rent deposit, and submitted the Tenant's lease, which was signed by the previous Landlord for the period between June, 2021 and June, 2022. The lease specified that a last months rent deposit was not required, that it was a month-to-month tenancy with a monthly rent of \$10,000.00, and that the Tenant agreed to pay the full amount (\$120,000.00) in advance.
2. I was satisfied that the Tenant had not paid a last month's rent deposit. Therefore, the application was amended to remove the last month's rent deposit.

Amount to void the order

3. The parties requested the use of a breakout room to discuss the resolution of the matter prior to the hearing. At the outset of the hearing, the parties had agreed to the arrears and to the issuance of a standard order, but had not agreed to the amount required to void the order.
4. The amount of arrears owing to February 16, 2023 is \$50,000.00, which exceeds the Board's monetary jurisdiction of \$35,000.00. The Landlord agreed to waive the arrears above \$35,000.00 to proceed with the hearing for the order to evict the Tenant, but did not consent to the Tenant voiding the order without paying all of the arrears owing. The Landlord's Legal Representative argued that allowing the Tenant to void the order without paying all of the arrears owing to the Landlord would be to allow the Tenant to benefit financially from his own breach of the tenancy agreement.
5. The Tenant's Legal Representative argued that the Board does not have jurisdiction to order the Tenant to pay over \$35,000.00, and therefore the Tenant should only have to pay \$35,000.00 to void the order. I reserved on the issue, and the application proceeded on its merits.
6. After the hearing, I considered the parties' submissions. The monetary jurisdiction of the Board is set out in subsection 207(1) of the *Residential Tenancies Act, 2006* (the 'Act'), which provides:

207 (1) The Board may, where it otherwise has the jurisdiction, order the payment to any given person of an amount of money up to the greater of \$10,000 and the monetary jurisdiction of the Small Claims Court. 2006, c. 17, s. 207 (1).

7. The voiding provision for an order under Section 74 of the Act is set out in subsection 4, which provides:
 - (4) An eviction order referred to in subsection (3) is void if the tenant pays to the landlord or to the Board, before the order becomes enforceable,
 - (a) the amount of rent that is in arrears under the tenancy agreement;
 - (b) the amount of additional rent that would have been due under the tenancy agreement as at the date of payment by the tenant had notice of termination not been given;
 - (c) the amount of NSF cheque charges charged by financial institutions to the landlord in respect of cheques tendered to the landlord by or on behalf of the tenant, as allowed by the Board in an application by the landlord under section 87;
 - (d) the amount of administration charges payable by the tenant for the NSF cheques, as allowed by the Board in an application by the landlord under section 87; and
 - (e) the costs ordered by the Board. 2006, c. 17, s. 74 (4).
8. While the Board cannot order a person to pay more than \$35,000.00 in accordance with s. 207.1 of the Act, I find that this does not apply to the "stay and pay" option set out in the order below. The order terminates the tenancy and requires the Tenant to pay the amount up to the Board's monetary jurisdictional limit of \$35,000.00 plus the cost of filing the application. The Tenant can choose to pay the full amount of arrears,

rent, and costs owing to the Landlord if they choose not to vacate the unit. This amount is optional and only required if the Tenant elects to continue the tenancy. Therefore, the Board is not ordering this amount to be paid and is not ordering an amount that exceeds the limit.

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 \$10,000.00. It is due on the 16th day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$328.77. This amount is calculated as follows: \$10,000.00 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 15, 2023 are \$50,000.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.
9. The Landlord agrees to waive any amount of the Board's jurisdiction pursuant to section 207 of the Act, specifically, any amount above \$35,186.00 (\$35,000.00 plus the \$186.00 application filing fee).
10. The Landlord requested an order for eviction.
11. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, and as the Tenant's Legal Representative declined to present any submissions in support of relief from eviction, I find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
12. This order contains all reasons for the determinations and order made. No further reasons will be issued.

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:**
 - \$60,186.00 if the payment is made on or before March 15, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$70,186.00 if the payment is made after March 15, but on or before March 20, 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 amount required under that subsection on or after March 21, 2023, but before the Sheriff gives vacant possession to the Landlord. 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 20, 2023.**
 5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$35,186.00. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
 6. If the Tenant does not pay the Landlord the full amount owing on or before March 20, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 21, 2023 at 5.00% annually on the balance outstanding.
 7. If the unit is not vacated on or before March 20, 2023, then starting March 21, 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 March 21, 2023.

March 9, 2023
Date Issued

Kathleen Wells
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 21, 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.

*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

**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 15, 2023

Rent Owing To March 15, 2023	\$60,000.00
Application Filing Fee	\$186.00
Total the Tenant must pay to continue the tenancy	\$60,186.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before March 20, 2023

Rent Owing To April 15, 2023	\$70,000.00
Application Filing Fee	\$186.00
Total the Tenant must pay to continue the tenancy	\$70,186.00

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

Rent Owing To Hearing Date	\$45,589.09
Application Filing Fee	\$186.00
Less the amount the Landlord waived above the LTB's jurisdictional limit.	-\$10,589.00
Total amount owing to the Landlord	\$35,186.00