



Order under Section 69 Residential Tenancies Act, 2006

Citation: STERLING SILVER DEVELOPMENT CORPORATION v Waite, 2023 ONLTB 21751

Date: 2023-03-07

File Number: LTB-L-038844-22

In the matter of: 1107, 4003 BAYVIEW AVE
NORTH YORK ON M2M3Z8

Between: STERLING SILVER DEVELOPMENT CORPORATION Landlord

And

Lloyd O. Waite Tenant

STERLING SILVER DEVELOPMENT CORPORATION (the 'Landlord') applied for an order to terminate the tenancy and evict Lloyd O. Waite (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on February 15, 2023.

The Landlord and the Tenant attended the hearing.

The Landlord's Legal Representative, Sharon Harris, and the Tenant attended the hearing. June Jayatilleke (JJ) attended the hearing as a witness for the Landlord.

Preliminary Matter

1. The parties had reached a consent agreement prior to the hearing, however, at the hearing, the Tenant testified that he had not received an N1 Notice of Rent Increase, and was unaware that his rent had increased on January 1, 2023. Although the Tenant was prepared to consent to the terms of an order, he indicated that he wanted to speak to the Landlord about the rent increase after the hearing.
2. As the Tenant could not both object to the lawful rent, and consent to the rent arrears, I asked to hear from the parties with respect to service of the N1 Notice.

3. JJ works is the property manager for the residential complex. JJ testified that the N1 Notice was served on the Tenant on September 27, 2022, by placing the notice through the Tenant's door, according to the Landlord's usual practice. N1 Notices for affected Tenants are prepared by the Landlord's accounting department and sent to the property manager. who attaches a cover letter and places the notices in envelopes. N1 Notices are distributed by staff to the doors of the tenants. The Landlord submitted a copy of the N1 Notice, dated September 15, 2022, reflecting a rent increase for January 1, 2023 of \$56.90, and a new rent of \$2,333.31. The Landlord also submitted a copy the attached letter from the property manager dated September 27, 2022 in support of their testimony.
4. The Tenant testified that he had not received the N1 notice, and that he often found notices from the Landlord on the ground outside of his unit, as the Landlord placed them at the side of his door. The Tenant maintained that he would pay the arrears, and that he was simply asking when his rent was increased.
5. Based on the evidence before me, I found, on a balance of probabilities, that the Tenant was served with the N1 Notice on September 27, 2023. Here, the parties provided contradictory testimony. I prefer the Landlord's evidence, which was internally consistent. The Tenant did not raise the issue of the rent increase until the hearing, however the Tenant had discussed the arrears owing with the Landlord's Legal Representative prior to the hearing. Additionally, the Tenant has received communications in 2023 from the Landlord about the outstanding arrears which reflected the rent increase, and were included in the Landlord's disclosure evidence.
6. Therefore, I find that the lawful monthly rent is \$2,333.31

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 \$2,333.31. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$76.71. This amount is calculated as follows: \$2,333.31 x 12, divided by 365 days.
5. The Tenant has paid \$16,142.50 to the Landlord since the application was filed.
6. The rent arrears owing to February 28, 2023 are \$4,458.29.
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 \$2,276.47 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. Interest on the rent deposit, in the amount of \$7.17 is owing to the Tenant for the period from January 1, 2023 to February 15, 2023.
10. The Tenant testified that he would pay the arrears on or before February 25, 2023.
11. The Landlord requested a standard order with an eviction date of February 28, 2023.
12. 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. When asked if there were circumstances that I should consider, the Tenant reiterated that he would pay the arrears.

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:**
 - \$6,977.60 if the payment is made on or before March 11, 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 11, 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 11, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$1,177.99. 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 \$76.71 per day for the use of the unit starting February 16, 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 18, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 19, 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 11, 2023, then starting March 12, 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 12, 2023.

March 7, 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 12, 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 11, 2023

Rent Owing To March 31, 2023	\$22,934.10
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$16,142.50
Total the Tenant must pay to continue the tenancy	\$6,977.60

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

Rent Owing To Hearing Date	\$19,418.13
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$16,142.50
Less the amount of the last month's rent deposit	- \$2,276.47
Less the amount of the interest on the last month's rent deposit	- \$7.17
Total amount owing to the Landlord	\$1,177.99
Plus daily compensation owing for each day of occupation starting February 16, 2023	\$76.71 (per day)