



Order under Section 69 Residential Tenancies Act, 2006

Citation: Madalikat Developments Ltd. v Withey, 2023 ONLTB 22059

Date: 2023-03-03

File Number: LTB-L-026639-22

In the matter of: 151 BRISTOL ST
GUELPH ON N1H 3M1

Between: Madalikat Developments Ltd. c/o William Platt Landlord

And

Greg Smith Tenants
Sunni Withey

Madalikat Developments Ltd. c/o William Platt (the 'Landlord') applied for an order to terminate the tenancy and evict Greg Smith and Sunni Withey (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on January 16, 2023 at 10:21 a.m.

The Landlord William Platt, the Landlord's counsel Newton Wong and the Tenant Sunni Withey attended the hearing.

Preliminary Issue:

1. As a preliminary matter, the Tenants requested an adjournment of the proceedings citing a lack of time to collect information about maintenance issues and a lack of vital services in advance of the hearing.
2. Taking in submissions from both parties at this hearing, I denied the adjournment with reasons to follow. These are my reasons.

Tenant's Evidence

3. The Tenant testified that she and her family were sick with the flu on or before Christmas to the date of the hearing and this prevented her from being able to prepare the evidence and meet the disclosure requirements in advance of the hearing.
4. The Tenant further testified she had internet connectivity issues during this period which did not allow her to access the portal to review or submit evidence.

Landlord's Evidence

5. The Landlord contested the adjournment request and submitted that the Landlord required the rent to pay the mortgage and property tax payments, with an approximate mortgage payment of \$1,800.00 per month, and any delay would further prejudice the Landlord who has already incurred considerable hardship due to the volume of arrears.
6. The Landlord's representative confirmed he or the Landlord had not heard from the Tenant regarding any illness or technical issues or had received correspondence with respect to an adjournment request and maintained that the Tenant had plenty of time to prepare for the hearing and provide disclosure in advance of the hearing.

Analysis

7. The Tenant requested an adjournment to raise other issues with respect to the tenancy pursuant to subsection 82(1) of the *Residential Tenancies Act, 2006* (the 'Act'). However, the Tenant's right to raise issues at the hearing of the Landlord's arrears application is subject to subsection 82(2) of the Act which provides as follows:

82.(1) At a hearing of an application by a landlord under section 69 for an order terminating a tenancy and evicting a tenant based on a notice of termination under section 59, the Board shall permit the tenant to raise any issue that could be the subject of an application made by the tenant under this Act if the tenant,

- (a) complies with the requirements set out in subsection (2); or
- (b) provides an explanation satisfactory to the Board explaining why the tenant could not comply with the requirements set out in subsection (2).

(2) The requirements referred to in subsection (1) are the following:

1. The tenant shall give advance notice to the landlord of the tenant's intent to raise the issue at the hearing.
2. The notice shall be given within the time set out in the Rules
3. The notice shall be given in writing and shall comply with the Rules.

8. Under the Boards Rules, Procedure 19.4 and 19.5 explain:

19.4 Unless the LTB has directed or ordered otherwise, a tenant who intends to raise issues under sections 82(1) or 87(2) of the RTA during a hearing for a landlord's application about rent arrears shall provide the other parties and the LTB with the following at least 7 days before the scheduled CMH or hearing:

1. A written description of each issue the tenant intends to raise; and

2. A copy of all documents, pictures and other evidence that the tenant intends to rely upon at the hearing.

19.5 A tenant who fails to provide the LTB and other parties with a written description of each issue they intend to raise at the hearing as required in Rule 19.4 shall not be permitted to raise issues under sections 82(1) or 87(2) of the RTA during a hearing for a landlord's application about rent arrears unless the LTB is satisfied that the tenant could not comply with the requirements.

9. It is undisputed the Tenants received the Notice of Hearing on or before December 25, 2022.
10. In this case, the Tenants neither served the Landlord with the required notice of the issues that they intended to raise at the hearing nor filed the same information with the Board.
11. The Tenant testified that she was sick with the flu and had internet connectivity issues. That said, the Tenant further testified she nor her household went to the hospital or the doctor, nor did the Tenant obtain any records documenting her illness nor did she contact the Board, the Landlord or the Landlord's representative in advance informing them of her inability to prepare or provide disclosure due to her and her family's illness or connectivity issues. I am not persuaded by the Tenants' explanation she could not comply with the requirements within the timeframe mandated by the Notice of Hearing and Rule 19.4.
12. The Tenant's failure to comply with the requirements of subsection 82(2) of the Act cannot fairly serve as grounds for an adjournment to comply with requirements that she could have followed in the first instance. The Tenants remain free to file their own application(s) with respect to these issues, subject to the applicable time limitations in the Act.
13. The adjournment request is denied.

Determinations:

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants 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 Tenants were still in possession of the rental unit.
3. The lawful rent is \$2,000.00. It is due on the 20th day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$65.75. This amount is calculated as follows: \$2,000.00 x 12, divided by 365 days.
5. The Tenants have not made any payments since the application was filed.
6. The rent arrears owing to January 19, 2023 are \$22,000.00.
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.

Relief from Eviction

9. The Tenants alleged that there have been ongoing maintenance problems with the unit and invited me to consider these actions to justify mandatory refusal of eviction under subsection 83(3)(a) of the Act, when “the landlord is in serious breach of the landlord’s responsibilities under this Act or of any material covenant in the tenancy agreement.”
10. The Tenant testified the heat and plumbing were not working causing the unit to be cold and water to leak on the floor. The Tenant also mentioned that the hydro, while working at present, has been intermittent.
11. The Landlord’s representative indicated the Landlord received only one complaint from the Tenant about the plumbing and that was in January 2022. The Landlord called a plumber and retrieved a children’s toy from the main drain fixing the issue. Further, the Landlord indicated he received only one complaint from the Tenant about the hydro and that was in December 2022. The Landlord inspected the unit and contacted Hydro and confirmed there were no issues. The Landlord had not received any complaints about the heat.
12. Subsection 83(3)(a) of the Act speaks in the present tense, thus I cannot consider past breaches that have been remedied. Although the Tenants claim the problems are ongoing, the evidence before me suggests that the Landlord had addressed the plumbing and hydro at one point in the past thereby mitigating the issue. The use of the word “serious” in subsection 83(3)(a) establishes that not all breaches of the Landlord’s responsibilities can be considered; only those determined by the Member to be serious will invoke section 83(3) of the Act. Even if all of these issues were ongoing, I am not satisfied based on the Tenant’s evidence or description of them that the matters, alone or in the aggregate, constitute a serious breach of any responsibilities of the Landlord under the *Act*. In summary, there is a lack of specific evidence, beyond the Tenant’s testimony, pertaining to the severity of the heat, hydro and plumbing issues for me to be persuaded there is a serious breach in responsibilities.
13. The Tenant testified she has 3 children and a dog and coupled with her recent illness and a competitive housing market in Guelph it will be difficult find a new affordable unit that is suitable for her family.
14. The Tenant testified that she and her husband are self employed and currently her household income is typically \$2,000.00 per month, plus they receive an additional \$2,000.00 per month in subsidy payments. The Tenant further testified her household income for January 2023 is only \$1,500.00. The Tenant anticipates additional income once her husband’s business gets new clients. The Tenant proposed a payment plan; however, could not commit to a monthly amount as her household income was limited at present. In the alternative, should she be evicted, the Tenant testified she needs additional time, approximately 1 month to find a suitable housing arrangement or arrange to move in with family.
15. The Landlord’s representative reiterated the Tenant’s testimony that her household income was approximately \$4,000.00 per month, and yet submitted that despite that income the

Tenant had not made a single payment to the Landlord for rent or towards the arrears since the Notice of Termination was served.

16. I have weighed the evidence of both parties and considered all the circumstances and I am not persuaded the Tenants have a stable and significant enough income to commit to payment plan; however, 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 Tenants and find that it would not be unfair to postpone the eviction until April 19, 2023 pursuant to subsection 83(1)(b) of the Act.
17. The Landlord acknowledges the Tenant's circumstances and consented to a one month delay to the eviction.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$26,186.00 if the payment is made on or before March 19, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$28,186.00 if the payment is made on or before April 19, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after April 19, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
4. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before April 19, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$21,988.75. 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. The Tenants shall also pay the Landlord compensation of \$65.75 per day for the use of the unit starting January 17, 2023 until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before April 19, 2023, the Tenants will start to owe interest. This will be simple interest calculated from April 20, 2023 at 5.00% annually on the balance outstanding.

8. The Landlord or the Tenants 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 April 19, 2023, then starting April 20, 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 April 20, 2023.

March 3, 2023
Date Issued

Greg Witt
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 October 19, 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 Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before March 19, 2023

Rent Owing To March 19, 2023	\$26,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$26,186.00

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before April 19, 2023

Rent Owing To April 19, 2023	\$28,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$28,186.00

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

Rent Owing To Hearing Date	\$21,802.75
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	- \$0.00
Less the amount of the interest on the last month's rent deposit	- \$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 amount owing to the Landlord	\$21,988.75
Plus daily compensation owing for each day of occupation starting January 17, 2023	\$65.75 (per day)