



Order under Section 69 Residential Tenancies Act, 2006

Citation: Havcare Investments Inc v Stone, 2023 ONLTB 22614

Date: 2023-03-01

File Number: LTB-L-029305-22

In the matter of: 1021, 500 DAWES RD Toronto
ON M4B2G1

Between: Havcare Investments Inc Landlord

And

Michael Stone Tenant

Havcare Investments Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Michael Stone (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 18, 2023.

The Landlord's representative Carolyn Krebs and the Tenant attended the hearing.

Determinations:

Tenant issues raised at the hearing

1. The Tenant submitted in evidence notices of rent increase dating back to 2012. The Tenant alleges that the Landlord has been collecting illegal rent by way of above guideline rent increases.
2. The Tenant also submitted letters sent to the Landlord May 12, 2017 and March 12, 2019 indicating that the 2017 and 2019 notice of rent increase were miscalculated and requested a revised notice of rent increase.

Analysis

3. At the hearing I advised the Tenant that the Tenant may only raise an issue within the limitation period.

4. s. 29(2) of the Act sets out the limitation period for Tenant applications:
 - 29(2) No application may be made under subsection (1) more than one year after the day the alleged conduct giving rise to the application occurred.
5. A “limitation period” refers to the time period within which an application/motion/request must be filed with the LTB. For example, as set out in subsection 29(2) of the *Residential Tenancies Act, 2006* (“RTA”), the “limitation period” for most Tenant Applications is 1 year from the date a breach occurred.
6. Therefore, based on the rent the Tenant paid in 2021, and the notice of rent increase issued to the Tenant on September 30, 2021 to be effective January 1, 2022, I determined that the Tenant was charged a 1.2% rent increase and was not charged an illegal rent increase.
7. The arrears owing to the Landlord are based on the Tenant’s refusal to pay the rent increases dating back to 2015.
8. 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.
9. As of the hearing date, the Tenant was still in possession of the rental unit.
10. The lawful rent is \$953.33. It is due on the 1st day of each month.
11. Based on the Monthly rent, the daily rent/compensation is \$31.34. This amount is calculated as follows: $\$953.33 \times 12$, divided by 365 days.
12. The Tenant has paid \$6,008.03 to the Landlord since the application was filed.
13. The rent arrears owing to January 31, 2023 are \$5,737.20.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. The Landlord collected a rent deposit of \$953.33 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.
16. Interest on the rent deposit, in the amount of \$22.98 is owing to the Tenant for the period from February 1, 2022 to January 18, 2023.
17. The Landlord requested a standard order (11-day eviction). 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 postpone the eviction until April 24, 2023 pursuant to subsection 83(1)(b) of the Act.

18. As I have outlined above, the rent arrears are not due the Tenant not paying monthly rent but a result of a dispute between the Landlord and Tenant regarding annual rent increases. The Tenant refused to pay the increased portion of the rent from 2015 to 2022. The Tenant did not file within the limitation period to dispute the rent increase and he stated he was not aware of the limitation period.
19. The Tenant testified that he could not pay the amount owed to the Landlord and would source assistance in paying the arrears or seek another rental unit. Delaying eviction will give the Tenant the opportunity to seek financial assistance to repay the arrears owing and potentially preserve the Tenancy.

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:
 - \$7,829.86 if the payment is made on or before March 31, 2023. See Schedule 1 for the calculation of the amount owing.
- OR**
- \$8,783.19 if the payment is made on or before April 24, 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 April 24, 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 April 24, 2023
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$4,557.68. 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 \$31.34 per day for the use of the unit starting January 19, 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 12, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 13, 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 April 24, 2023, then starting April 25, 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 25, 2023.

March 1, 2023

Date Issued

Maria Shaw

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 25, 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 31, 2023

Rent Owing To March 31, 2023	\$13,651.89
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$6,008.03
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	\$7,829.86

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before April 24, 2023

Rent Owing To April 30, 2023	\$14,605.22
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$6,008.03
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	\$8,783.19

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

Rent Owing To Hearing Date	\$11,356.02
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$6,008.03
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	- \$953.33
Less the amount of the interest on the last month's rent deposit	- \$22.98
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	\$4,557.68
Plus daily compensation owing for each day of occupation starting January 19, 2023	\$31.34 (per day)