



Order under Section 69 Residential Tenancies Act, 2006

Citation: 2786947 Ontario Inc. v Benfield, 2023 ONLTB 22071

Date: 2023-02-28

File Number: LTB-L-040064-22

In the matter of: 203 PHILLIPS ST
BARRIE ON L4N3V2

Between: 2786947 Ontario Inc.

Landlord

And

William James Lewis Benfield

Tenant

2786947 Ontario Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict William James Lewis Benfield (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on February 16, 2023. The Landlord's legal representative, Lian Walker, and the tenant attended the hearing. The Tenant spoke with Tenant Duty Counsel on the hearing date.

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 \$1,800.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$59.18. This amount is calculated as follows: \$1,800.00 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 28, 2023 are \$28,800.00.
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 Tenant indicated that he had given the first years rent money to the Landlord's real estate agent and then the agent subsequently left the country without applying the money he paid to the rent. The Tenant had no evidence available on the hearing date to provide any proof that this exchange took place. The Tenant is a single dad with a 2 year old

daughter and has been getting OW to support his monthly expenses and he receives some supplemental income from his ex, however, the amount he receives is not enough to cover the ongoing rent. The Tenant also admittedly had not paid any rent to the Landlord since July of 2022. Therefore, a payment plan would not be appropriate under the circumstances.

10. The Landlord denied that the Tenant paid the rent to the agent, however, the Landlord was not opposed to an extension of time to give the Tenant the opportunity to secure housing.
11. 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 1, 2023 pursuant to subsection 83(1)(b) of the Act.

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:**
 - \$28,986.00 if the payment is made on or before February 28, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$30,786.00 if the payment is made on or before March 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$32,586.00 if the payment is made on or before April 1, 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 1, 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 1, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$28,132.88. 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 Tenant shall also pay the Landlord compensation of \$59.18 per day for the use of the unit starting February 17, 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 11, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 12, 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 1, 2023, then starting April 2, 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 2, 2023.

February 28, 2023
Date Issued

Terri van Huisstede
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 2, 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 February 28, 2023

Rent Owing To February 28, 2023	\$28,800.00
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 credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$28,986.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before March 31, 2023

Rent Owing To March 31, 2023	\$30,600.00
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 credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$30,786.00

C. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before April 1, 2023

Rent Owing To April 30, 2023	\$32,400.00
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 credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$32,586.00

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

Rent Owing To Hearing Date	\$27,946.87
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	- \$
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	\$28,132.88
Plus daily compensation owing for each day of occupation starting February 17, 2023	\$59.18 (per day)

2023 ONL TB 22071 (CanLII)