



Order under Section 69 Residential Tenancies Act, 2006

Citation: Johnson v Hickey, 2023 ONLTB 20757

Date: 2023-02-22

File Number: LTB-L-042086-22

In the matter of: 28 LONGFELLOW CRT WHITBY
ON L1N6V7

Between: Warren Johnson Landlord

And

Victoria Hickey Tenant

Warren Johnson (the 'Landlord') applied for an order to terminate the tenancy and evict Victoria Hickey (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on February 8, 2023.

The Landlord and the Tenant attended the hearing.

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.

The Tenant owes the Landlord \$9,351.00

3. The lawful rent is \$950.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$31.23. This amount is calculated as follows: \$950.00 x 12, divided by 365 days.
5. The Tenant has paid \$2,250.00 to the Landlord since the application was filed.

6. The parties do not dispute that the rent arrears owing to February 28, 2023 are \$9,150.00.
7. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.
9. Accordingly, the total amount the Tenant owes the Landlord is \$9,351.00, including rent arrears to February 28, 2023 and the application filing fee.

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Section 83 considerations

10. 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 grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.
11. The Tenant requested a payment plan to resolve the application. The Tenant testified that the reason she fell into arrears was due to interruptions in her employment. The Tenant testified that she is starting a new job the week after the hearing, and she expects to get paid \$2,500.00 per month after deductions. The Tenant testified that her total monthly income, including child benefits and other government benefits will be approximately \$3,114.80 once she starts getting paid at her job. The Tenant testified that her monthly expenses are approximately \$2,320.46, including rent (\$950.00), phone and internet (\$190.00), Netflix (\$20.00), car insurance (\$272.86), gas (\$300.00), daycare (\$187.60), student loan payments (\$100.00) and food (\$300.00). The Tenant testified that she is able to pay \$300.00 per month toward the arrears and based on the Tenant's testimony about her financial circumstances, I find that she should be able to make those payments.
12. The Landlord disputed the Tenant's proposed payment plan. The Landlord testified that based on the Tenant's minimal payments over the past year as well as her noncompliance with a payment plan the parties arranged between themselves, he lacks confidence in the Tenant's ability to pay the rent and arrears going forward. However, the Landlord did not provide evidence that the proposed payment plan, although relatively long, will cause him prejudice.
13. The Tenant is a single mother. She lives in the rental unit with her 5-year-old son. She has been living in the unit for six years. I did not hear evidence about other prior applications for non-payment of rent during this tenancy. The Tenant also presented uncontested evidence that her circumstances are about to change with her new job, and she is ready and willing to continue the tenancy by making regular payments.

14. Accordingly, I find the Tenant's proposed payment plan to be reasonable. The first payments will be delayed until March 3, 2023, to give the Tenant time to receive her first payment from her new job.
15. If the Tenant breaches the payment plan, the Landlord has recourse and may file an application with the LTB seeking eviction, without notice to the Tenant within 30 days of the breach.

It is ordered that:

1. The Tenant shall pay to the Landlord \$9,351.00 for arrears of rent up to February 28, 2023 and costs.
 2. The Tenant shall pay to the Landlord the amount set out in paragraph 1 in accordance with the following schedule:
 - \$300.00 toward the arrears and costs on or before March 3, 2023;
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- \$300.00 toward the arrears on or before the first day of each month from April 1, 2023 up to and including September 1, 2025; and
 - \$51.00 on or before October 1, 2025.
 3. The Tenant shall also pay to the Landlord the rent for March 2023 on or before March 3, 2023.
 4. The Tenant shall pay the new rent on time and in full as it comes due and owing for the period April 1, 2023 to October 1, 2025, or until the arrears are paid in full, whichever date is earliest.
 5. If the Tenant fails to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenant to the Landlord pursuant to paragraph 1 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenant, apply to the LTB within 30 days of the Tenant's breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant and requiring that the Tenant pay any new arrears, NSF fees and related charges that became owing after February 28, 2023.

February 22, 2023

Date Issued

Anna Solomon
Vice Chair, 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.

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