



Order under Section 69 Residential Tenancies Act, 2006

Citation: McNabb v Wilkinson, 2023 ONLTB 21069

Date: 2023-02-16

File Number: LTB-L-033748-22

In the matter of: 5 Windmill Road
Toronto ON M4G2Y4

Between: Stuart A McNabb Landlord

And

Kealy Wilkinson Tenant

Stuart A McNabb (the 'Landlord') applied for an order to terminate the tenancy and evict Kealy Wilkinson (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on February 1, 2023.

Only the Landlord's Legal Representative, Marshall Yarmus, attended the hearing.

As of 10:30 am, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

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 monthly rent is \$3,200.00. It is due on the 1st day of each month.
4. Based on the monthly rent, the daily rent/compensation is \$105.21. This amount is calculated as follows: \$3,200.00 x 12, divided by 365 days.
5. The Tenant has paid \$12,800.00 to the Landlord since the application was filed.
6. The rent arrears owing to February 28, 2023 are \$38,400.00.
7. The rent arrears above exceeds the monetary jurisdiction of the LTB. With reference to section 207(1) of the *Residential Tenancies Act, 2006* (the 'Act'), the LTB's current monetary jurisdiction is \$35,000.00.

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8. Any party whose claim exceeds \$35,000.00 must make an election: to proceed with their claim to a court of competent jurisdiction; or abandon the excess over \$35,000.00 and accede to the jurisdiction of the LTB. Before me, the Landlord agreed to attorn to the LTB's monetary jurisdiction.
9. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
10. The Landlord collected a rent deposit of \$3,200.00 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.
11. Interest on the rent deposit, in the amount of \$646.18 is owing to the Tenant for the period from September 10, 2010 to February 1, 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.

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:**
 - \$35,000.00 if the payment is made on or before February 27, 2023. See Schedule 1A 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 February 27, 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 February 27, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$31,645.03. 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 1B for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$105.21 per day for the use of the unit starting February 2, 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 February 27, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 28, 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 February 27, 2023, then starting February 28, 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 February 28, 2023.

February 16, 2023
Date Issued

Alex Brkic
 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 August 31, 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 – see A & B

A. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before February 27, 2023

Rent Owing To January 31, 2023	\$48,000.00
Rent Now Owing for February 1-28, 2023	\$3,200.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed (reported at the Feb 1/23 hearing)	- \$12,800.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Total the Tenant must pay to continue the tenancy (adding the above lines together)	\$38,586.00
BUT, due to the LTB’s monetary jurisdiction, the Tenant must pay the Landlord the following to continue the tenancy	\$35,000.00

B. Amount the Tenant must pay if the tenancy is terminated (Tenant must vacate on or before February 27, 2023)

Rent Owing To Hearing Date (February 1, 2023)	\$48,105.21
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed (reported at the Feb 1/23 hearing)	- \$12,800.00
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	- \$3,200.00
Less the amount of the interest on the last month's rent deposit	- \$646.18
Total amount owing to the Landlord	\$31,645.03
Plus daily compensation owing for each day of occupation starting February 2, 2023	\$105.21 (per day)

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