



Order under Section 69 Residential Tenancies Act, 2006

Citation: Muhammed v Seguin, 2023 ONLTB 20381

Date: 2023-02-14

File Number: LTB-L-016773-22

In the matter of: 421 ABERDEEN AVE
Cornwall ON K6H2K7

Between: Raffi Muhammed Landlord

And

Chantelle Seguin and Morris Anderson Tenant

Raffi Muhammed (the 'Landlord') applied for an order to terminate the tenancy and evict Chantelle Seguin and Morris Anderson (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlord also applied for an order to terminate the tenancy and evict the Tenant because the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant.

The Landlord also applied for an order requiring the Tenants to pay the Landlords' reasonable out-of-pocket expenses that are the result of the Tenants' failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

This application was heard by videoconference on February 7, 2023.

Only the Landlord and the Landlord's Legal Representative Grace George attended the hearing.

As of 10:28 a.m., 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:

The L1 Application:

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 \$1,500.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$49.32. This amount is calculated as follows: \$1,500.00 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 \$19,900.00.
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.

L2 Application – N5 notice and s.88.2 relief:

9. The Landlord also served the Tenant with a N5 notice of termination on February 24, 2022 which indicated a termination date of March 17, 2022 alleging that the Tenant has substantially interfered with another tenant's or the Landlord's reasonable enjoyment of the residential complex and/or the Landlord's lawful rights, privileges or interests. The N5 notice of termination indicates that in order to void the N5 notice of termination, the Tenants could stop the activities or correct the behaviour as described in the N5 notice of termination within 7 days after receiving the notice.
10. The N5 notice of termination alleges that the Tenants have not paid electricity bills for the months of November, 2021 through to February, 2022 and that the Tenants were responsible for the payment of electricity pursuant to the tenancy agreement.
11. The Landlord's Legal Representative submits that the Tenants did not void the N5 notice of termination and filed their L2 application based on the N5 notice of termination as well as requesting reimbursement from the Tenants pursuant to section 88.2 of the *Act* as they did not pay utility costs that they were required to pay under the terms of the tenancy agreement.
12. The Landlord's Legal Representative stated that correspondence dated February 2, 2023 was provided to the Tenants indicating that the outstanding electricity bills now total \$1,293.74 and now seeks an amendment to their L2 application to reflect the additional electricity bills that have become outstanding since filing the L2 application. However, upon review of the electricity bills submitted to the Board in support of their out-of-pocket expenses claim, the amounts outstanding total \$923.64. As the Tenants were made aware of the Landlord's intention to seek reimbursement of the further electricity bills, albeit for a higher amount, the amendment is granted to reflect the amount of \$923.64 as the total utility costs.
13. Section 64 of the *Act* states that:

A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.

14. The tenancy agreement, submitted as evidence, states that the Tenants are responsible for electricity costs.
15. Cornwall Electric issued to the Landlord an invoice dated February 9, 2022 for the period of December 4, 2021 to January 31, 2022 in the amount of \$174.58 which was provided to the Tenants by the Landlord. The Landlord testified that the Tenants have not paid this invoice.
16. Cornwall Electric issued to the Landlord an invoice dated April 11, 2022 for the period of February 1, 2022 to April 5, 2022 in the amount of \$156.25 which was provided to the Tenants by the Landlord. The Landlord testified that the Tenants have not paid this invoice.
17. Cornwall Electric issued to the Landlord an invoice dated June 8, 2022 for the period of April 6, 2022 to June 6, 2022 in the amount of \$119.00 which was provided to the Tenants by the Landlord. The Landlord testified that the Tenants have not paid this invoice.
18. Cornwall Electric issued to the Landlord an invoice dated August 9, 2022 for the period of June 7, 2022 to August 4, 2022 in the amount of \$109.58 which was provided to the Tenants by the Landlord. The Landlord testified that the Tenants have not paid this invoice.
19. Cornwall Electric issued to the Landlord an invoice dated October 13, 2022 for the period of August 5, 2022 to October 4, 2022 in the amount of \$97.49 which was provided to the Tenants by the Landlord. The Landlord testified that the Tenants have not paid this invoice.
20. Cornwall Electric issued to the Landlord an invoice dated December 8, 2022 for the period of October 5, 2022 to December 6, 2022 in the amount of \$266.74 which was provided to the Tenants by the Landlord. The Landlord testified that the Tenants have not paid this invoice.
21. The Landlord and the Landlord's Legal Representative submits that every aforementioned invoice was provided to the Tenants and that the Tenants have failed to pay the electricity utility costs as they were required to pay under the terms of the tenancy agreement. The Landlord submits that as the Tenants have not paid the electricity utility bills, he has incurred additional financial strain and has had to take on additional work to pay for the bills.
22. Based on the uncontested evidence and submissions before me, I am satisfied on a balance of probabilities, that by not paying the electricity bills as the Tenants were required to do pursuant to the tenancy agreement, the Tenants have substantially interfered with the Landlord's lawful rights, privileges or interests.
23. The Board gained the jurisdiction to order a tenant to pay unpaid utilities effective September 1, 2021, when section 88.2 of the *Residential Tenancies Act, 2006* (the 'Act') came into force:

88.2 (1) A landlord may apply to the Board for an order requiring a tenant or former tenant to pay costs described in subsection (4) if,

(a) while the tenant or former tenant is or was in possession of the rental unit, the tenant or former tenant failed to pay utility costs that they were required to pay under the terms of the tenancy agreement; and

(b) in the case of a tenant or former tenant no longer in possession of the rental unit, the tenant or former tenant ceased to be in possession on or after the day section 20 of Schedule 4 to the *Protecting Tenants and Strengthening Community Housing Act, 2020* comes into force. 2020, c. 16, Sched. 4, s. 20.

...

88.2(4) The costs referred to in subsection (1) are reasonable out-of-pocket expenses that the landlord has incurred or will incur as a result of a tenant's or former tenant's failure to pay utility costs that they were required to pay under the terms of the tenancy agreement.

24. Based on the uncontested evidence and submissions before the Board, I find, on a balance of probabilities that the Landlord has incurred reasonable out-of-pocket expenses of \$923.64 as a result of the Tenants' failure to pay electricity utility costs.

Relief from eviction:

25. The Landlord was not aware of any factors to consider with respect to relief from eviction. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including 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*.

26. This order contains all of the reasons in this matter and no further reasons shall be issued.

It is ordered that:

L1 Application – Non-payment of rent

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:**
 - \$20,086.00 if the payment is made on or before February 25, 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 February 25, 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 25, 2023.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$18,931.24. 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 \$49.32 per day for the use of the unit starting February 8, 2023 until the date the Tenant moves out of the unit.
7. If the unit is not vacated on or before February 25, 2023, then starting February 26, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
8. 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 26, 2023.

L2 Application – N5 notice and utility costs

9. The tenancy between the Landlord and the Tenant is terminated. The Tenants must move out of the rental unit on or before February 25, 2023.
10. If the unit is not vacated on or before February 25, 2023, then starting February 26, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
11. 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 26, 2023.
12. The Tenant shall pay to the Landlord \$923.64 which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the unpaid utility costs.
13. If the Tenant does not pay the Landlord the full amount owing on or before February 25, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 26, 2023 at 5.00% annually on the balance outstanding.

February 14, 2023

Date Issued

Heather Chapple

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 26, 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 Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before February 25, 2023

Rent Owing To February 28, 2023	\$19,900.00
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 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	\$20,086.00

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

Rent Owing To Hearing Date	\$18,745.23
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	\$18,931.24
Plus daily compensation owing for each day of occupation starting February 8, 2023	\$49.32 (per day)