



Order under Section 69 Residential Tenancies Act, 2006

Citation: Shiplake Properties Ltd. v Robinson, 2023 ONLTB 19572

Date: 2023-02-14

File Number: LTB-L-031263-22

In the matter of: 1421, 45 DUNFIELD AVE
TORONTO ON M4S2H4

Between: Shiplake Properties Ltd. Landlord

And

Jamal Smith-Alexander and Kaiesha Robinson Tenant

Shiplake Properties Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Jamal Smith-Alexander and Kaiesha Robinson (the 'Tenants') because the Tenants did not pay the rent they owe.

This application was heard by videoconference on January 30, 2023. The Landlord attended the hearing and was represented by Geoff Paine. Jamal Alexander-Smith attended the hearing on behalf of the Tenants.

Determinations:

1. The Landlord served the Tenants with a valid N4 notice.
2. The Tenants did not void the N4 by paying the arrears owing by the termination date in the N4 notice or before the date this application was filed by the Landlord.
3. As of the hearing date, the Tenant was still in possession of the rental unit.
4. The lawful rent is \$2,024.00. It is due on the 1st day of each month. Based on the monthly rent, the daily rent/compensation is \$66.54.
5. The Landlord collected a rent deposit of \$2,024.00 and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$8.46 is owing to the Tenants for the period from December 1, 2022 to January 30, 2023.
6. Assuming that: (a) the N4 notice was valid and properly served; and (b) there are no issues raised by the tenant under section 82 of the *Residential Tenancies Act, 2006* (the 'Act'), an application under sections 59 and 69 of the Act based on the failure of a tenant to pay rent—an L1 application—involves what is essentially a 2-step process. The LTB must first determine whether the landlord has established on the balance of probabilities that the tenant has failed to pay rent lawfully owing under the applicable tenancy agreement. If that is established, the LTB must consider the application of section 83 of the Act.

7. The L1/L9 Information Update is essential evidence on an L1 application. It is a prescribed form the landlord must complete and deliver to the LTB and the tenant before the hearing of an L1 application. **[Rules of Procedure, Rule 10.1]** On the L1/L9 Information Update, the landlord—or a person acting on the landlord’s behalf, certifies the correctness of information relevant to the L1 application, including the lawful rent, the amount of any rent deposit held by the landlord, the rent that has become owing since the L1 was filed, the amount paid by the tenant since the L1 was filed and the total amount of the rent owing.
8. In many cases, the first stage of the inquiry on an L1 application is straightforward. It is typical for the Member hearing an L1 to begin the hearing by engaging in ‘active adjudication’ and asking: (a) the landlord to confirm that there are no changes to the information on the L1/L9 Information Update; and (b) the tenant whether they agree t the information the L1/L9 Information Update is accurate. In many cases, the tenant will agree the L1/L9 Information Update is accurate and there is no need for the Member to hear further evidence from the landlord on this issue—the tenant has acknowledged that they have failed to pay rent lawfully owing under the applicable tenancy agreement.
9. In this case, there was no dispute that the information on the Landlord’s L1/L9 information Update was accurate. Tenants agreed that they have not made any payments since March of 2022 the arrears owed are \$26,336.10. For that reason, I find that the Landlord has established that the Tenants have failed to pay rent lawfully owing.
10. The Tenants requested that I exercise my discretion under subsections 83(1) and 204(1) of the Act to preserve the tenancy and make a conditional order that would allow them to repay the arrears over 3 years. Mr. Smith-Alexander indicated the Tenants could not pay rent on February 1, 2023 and rent for February would have to be included in the payment plan.
11. The Landlord opposed the Tenants’ request because it would be unfair to impose a 3-year repayment plan.
12. In the context of an L1 application, section 83 provides the Member with discretion to (a) refuse to grant the application; or (b) postpone the eviction of the tenant **[Act, ss. 83(1) and (2)]**. The LTB also has discretion under subsection 204(1) to impose conditions on any order it makes. **[See Act, s. 204(1)]**
13. I must consider whether it would be unfair to refuse the Landlord’s application based on the terms proposed by the Tenant.
14. In *Pinto v. Regan* **[2021 ONSC 5502 (CanLII)]**, the Divisional Court considered paragraph 77(8)(b) of the Act. While it involves the application of a different section of the Act, *Pinto* provides some guidance as to the application of subsections 83(1) and 83(2). Paragraph 77(8)(b) requires that the Member hearing an application to set aside an order terminating a tenancy and evicting a tenant obtain without notice to the tenant set aside the order if the Member is satisfied, having regard to all the circumstances, that it would not be unfair to do so. Paragraphs 83(1)(a) and 77(8)(b) are both intended to reinforce the remedial nature of the Act and its purpose to preserve tenancies wherever possible. **[See Act, s. 1, and Honsberger v. Grant Lake Forest Resources Ltd., 2019 ONCA 44 (CanLII) and Pinto v. Regan, 2021 ONSC 5502 (CanLII)]** and should be interpreted consistently.

15. Based on *Pinto*, the principles applicable under paragraph 83(1)(a) are: (a) the LTB is required to consider the factual matrix that provides the context in which the dispute between the parties arose in its widest sense; (b) the LTB should refuse a landlord application seeking termination of the tenancy and eviction if it is satisfied it would not be unfair to do so; and (c) the onus on the tenant to satisfy the LTB that, having regard to all the circumstances, it would not be unfair to refuse the landlord's application. [*Pinto v. Regan*, 2021 ONSC 5502 (CanLII), para 28]
16. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that while it would be unfair to refuse the Landlord's application and impose a 3-year repayment plan, it would not be unfair to postpone eviction until March 15, 2023 to allow the Tenants with additional time to find alternative accommodations.
17. This tenancy began on September 1, 2021. Based on the Statement of Account the Landlord provided, there were payment issues from early in the Tenancy and the Tenants stopped paying rent entirely in April of 2022.
18. While I appreciate that the Tenants lost their employment due to COVID, when I inquired of Mr. Alexander-Smith why the Tenants made no efforts to pay rent since he secured employment in August of 2022, he was unable to explain. I do not accept his assertion he was 'confused' as to what the Tenants were supposed to do in the face of the Landlord's N4 notice and this application.
19. It would, in my view, be unfair to expect the Landlord to wait 3 years to be repaid in circumstances where it appears that the Tenants ought to be able to repay the Landlord much sooner. I appreciate that the Tenants have 3 children but they also, according to Mr. Smith Alexander, have a combined after-tax income of \$6,400.00 per month.
20. Based on the Tenants' combined after-tax income, they should be able to find alternative accommodations.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$28,546.10 if the payment is made on or before February 28, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$30,570.10 if the payment is made on or before March 15, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after March 15, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.

4. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before March 15, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$24,461.84. 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 Tenants. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$66.54 per day for the use of the unit starting January 31, 2023 until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlord the total amount owing on or before February 25, 2023, the Tenants will start to owe interest. This will be simple interest calculated from February 26, 2023 at 5.00% annually on the balance outstanding.
8. The Landlord or the Tenants 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 March 15, 2023, then starting March 16, 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 March 16, 2023.

February 14, 2023
Date Issued

E. Patrick Shea
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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on September 16, 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 28, 2023

Rent Owing To February 28, 2023	\$28,360.10
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	\$28,546.10

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before March 15, 2023

Rent Owing To March 31, 2023	\$30,384.10
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	\$30,570.10

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

Rent Owing To Hearing Date	\$26,308.30
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	- \$2,024.00
Less the amount of the interest on the last month's rent deposit	- \$8.46
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	\$24,461.84
Plus daily compensation owing for each day of occupation starting January 31, 2023	\$66.54 (per day)