



Order under Section 69 Residential Tenancies Act, 2006

Citation: Snetsinger v Conway, 2023 ONLTB 19850

Date: 2023-02-13

File Number: LTB-L-035431-22

In the matter of: 228 FIRST ST W
CORNWALL ON K6J1C5

Between: David Snetsinger Landlord

And

Andrew Conway Tenant

David Snetsinger (the 'Landlord') applied for an order to terminate the tenancy and evict Andrew Conway (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on February 2, 2023.

The Landlord's Legal Representative Marie Beaupre and the Tenant attended the hearing.

Determinations:

Preliminary Issue:

1. Prior to the hearing, the Tenant sought an adjournment as he stated that he only received the paperwork for this hearing on January 24, 2023 and does not have an appointment to speak to Legal Aid until February 7, 2023.
2. The Landlord opposed the adjournment request stating that the Tenant was aware of these proceedings, having received the N4 notice of termination as well as correspondence from the Landlord. Further, the Landlord submits that the Tenant has a substantial amount outstanding for arrears and the Landlord is a small landlord experiencing difficulties.
3. I stood the matter down at 10:25 a.m. to see if the Tenant could seek some legal advice. At 12 noon, the Tenant indicated that he did not speak with tenant duty counsel and was unable to speak to anyone for legal advice.
4. It was noted that despite the Tenant having almost a week's notice of this hearing, the Tenant did not contact the Landlord to discuss any issues he may have had regarding the L1 application. After considering a number of factors, including prejudice the parties may experience if I was to grant or deny the Tenant's adjournment request, I denied the adjournment request.

The L1 Application:

5. 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.
6. As of the hearing date, the Tenant was still in possession of the rental unit.
7. The lawful rent is \$750.00. It is due on the 1st day of each month.
8. Based on the Monthly rent, the daily rent/compensation is \$24.66. This amount is calculated as follows: \$750.00 x 12, divided by 365 days.
9. The Tenant has not made any payments since the application was filed.
10. The rent arrears owing to February 28, 2023 are \$10,500.00. The Tenant does not dispute this amount and seeks relief from eviction.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. There is no last month's rent deposit.

Relief from Eviction:

13. During the course of the hearing, the Tenant submitted that he withheld rent as there were allegedly safety issues in the rental unit. The Tenant did not serve a copy of section 82 issues with the Landlord. As the Landlord was not put on notice of the Tenant's section 82 issues, I found the Tenant could not raise them at the hearing. This does not preclude the Tenant from filing their own application, should he wish to have his issues addressed by the Board.
14. The Tenant states that he is currently not employed but looking for employment. The Tenant's girlfriend, who resides with him, is in training, receiving minimum wage. The Tenant states that he has 3 children, ages 3, 2, and 5 months old.
15. The Tenant wishes to preserve his tenancy and stated he would be able to pay \$250.00 to \$300.00 per month towards arrears as well as pay a lump sum payment of \$1,500.00 if his CHIPY program (a program offered through Ontario Works) application is accepted. It was confirmed that the Tenant had not received any confirmation of his acceptance as of the date of this hearing into this program.
16. The Tenant submitted that despite withholding rent due to alleged safety issues in the unit, he spent the monies on several birthday celebrations and on Christmas gifts.
17. The Landlord's Legal Representative seeks a standard order and submits that the Landlord financial hardship in having to pay the mortgage and that he suffers sleepless nights as a result of the non-payment of rent and other bills due to the non-payment of rent by the Tenant.

18. Pursuant to section 83(2) of the Act, the Board is required to consider “all of the circumstances” to determine whether or not it would be unfair to refuse eviction, delay eviction or put in place some sort of conditional order.
19. Given all of the evidence before me, I am not satisfied that it would be unfair to the Landlord to give the Tenant some additional time to move. The Tenant’s proposed payment plan of \$250.00-\$300.00 per month with a possible lump sum payment of \$1,500.00 towards satisfying the arrears would take approximately 2.5 years which, in my opinion, is not reasonable considering the circumstances before me and the quantum of arrears in this case. I heard insufficient evidence from the Tenant with respect to whether he has family or friends nearby to assist him but as the Tenant has three small children living in the unit, all under the age of 3 years, I am satisfied that the Tenant shall be afforded an opportunity to locate alternative accommodations.
20. 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 March 31, 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:**
 - \$10,686.00 if the payment is made on or before February 28, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$11,436.00 if the payment is made on or before March 31, 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 March 31, 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 March 31, 2023.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$8,485.32. 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 \$24.66 per day for the use of the unit starting February 3, 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 24, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 25, 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 March 31, 2023, then starting April 1, 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 1, 2023.

February 13, 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 October 1, 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	\$10,500.00
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	\$10,686.00

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	\$11,250.00
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	\$11,436.00

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

Rent Owing To Hearing Date	\$8,299.32
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	\$8,485.32
Plus daily compensation owing for each day of occupation starting February 3, 2023	\$24.66 (per day)