



Order under Section 69
Residential Tenancies Act, 2006

Citation: 1459 Trafalgar Street Investment Inc. v Sowdow, 2023 ONLTB 18013

Date: 2023-02-13

File Number: LTB-L-015542-22

In the matter of: 108, 1459 TRAFALGAR ST LONDON
ON N5W1W8

Between: 1459 Trafalgar Street
Investment Inc.

Landlord

And

Kevin Sowdow

Tenant

1459 Trafalgar Street Investment Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Kevin Sowdow (the 'Tenant') because:

- the Tenant did not pay the rent that the Tenant owes (L1 Application); and
- the Tenant has been persistently late in paying the Tenant's rent; (L2 Application).

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

These two applications were heard by videoconference on January 26, 2023. The Landlord's agent, Maria Garcia, and the Landlord's representative, David Ciobotaru, attended the hearing. As of 1:35 pm, 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. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before February 28, 2023.

L2 Application – Persistent Late Payment of Rent

2. On December 21, 2021, the Landlord served the Tenant an N8 notice of termination with a date of termination of February 28, 2022. The notice of termination alleges that the Tenant paid the rent late 6 times over the period of July 1, 2021 to December 21, 2021. I am satisfied that this N8 was properly served and complies with s. 58(2) of the *Residential Tenancies Act, 2006* (the 'Act').
3. The Landlord filed an L2 application with the Board on March 17, 2022. I am satisfied that this application complies with s. 69(1) of the Act. The Tenant was in possession of the rental unit on the day of filing, and remains in possession of the rental unit as of the day of this hearing.
4. The Landlord incurred costs of \$186.00 for filing both the L1 and L2 applications and is entitled to reimbursement of those costs.
5. The rent is due on the first day of each month.
6. The Landlord's agent testified that the Tenant paid the rent late for every month over the period of July 1, 2021 to December 21, 2021.
7. On the basis of the Landlord's uncontested evidence, I find that the Tenant has persistently failed to pay the rent on the date it was due. The rent was paid late 6 times in the 6-month period from July 1, 2021 to December 21, 2021.
8. After the notice was served, over the 13-month period from January 1, 2022 to the date of this hearing, the Landlord's agent testified that the Tenant paid the rent late every month, for a total of 13 times. Accordingly, on the basis of the Landlord's uncontested evidence, I find that the Tenant paid the rent late 13 times over the period of January 1, 2022 to the date of this hearing.
9. The Landlord's agent testified that the Landlord reached out to the Tenant via email on September 24, 2021, and via text messages in May 2022 and in January 2023, regarding timely rent payments; however, the Tenant never made payments on time.

Relief from Eviction

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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
11. Over the 19-month period from July 1, 2021 to the date of this hearing the Tenant paid the rent late 19 times. The Landlord's agent and representative were not aware of any circumstances that should be considered in a determination of whether to provide the Tenant with eviction relief, nor was the Tenant or his representative present at the hearing

to provide submissions with respect to the Tenant's relief from eviction. For these reasons, it would be unfair to the Landlord to grant the Tenant with eviction relief.

12. As a result, the requested eviction order shall be issued based on the Landlord's L2 application for persistent late payment of rent.

L1 Application – Non-Payment of Rent

13. As an eviction order is being issued based on the Landlord's L2 application it is not necessary to consider the request for eviction in the Landlord's L1 application. The Tenant will be ordered to pay the rent arrears owing less the last month's rent deposit and interest owing on the deposit pursuant to s. 86, s. 87(1)(a) and s. 106 of the Act.
14. As of the hearing date, the Tenant was still in possession of the rental unit.
15. The lawful rent is \$679.01. It is due on the first day of each month.
16. Based on the monthly rent, the daily rent/compensation is \$22.32. This amount is calculated as follows: \$679.01 x 12, divided by 365 days.
17. The Tenant has paid \$8,056.00 to the Landlord since the application was filed.
18. The rent arrears owing to January 31, 2023 are \$4,273.82.
19. The Landlord incurred costs of \$186.00 for filing both the L1 and L2 applications and is entitled to reimbursement of those costs.
20. The Landlord collected a rent deposit of \$615.00 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.
21. Interest on the rent deposit, in the amount of \$57.92 is owing to the Tenant for the period from September 15, 2016 to January 26, 2023.
22. This order contains all of the reasons for the decision within it and no further reasons shall be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before February 28, 2023.

2. The Tenant shall pay to the Landlord \$3,688.21. This amount includes rent arrears and daily compensation owing up to the date of the hearing and the cost of filing both applications. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1A for the calculation of the amount owing.
3. The Tenant shall also pay to the Landlord compensation of \$22.32 per day for the use of the unit starting January 27, 2023 until the date the Tenant moves out of the unit.
4. If the Tenant does not pay the Landlord the full amount owing on or before February 28, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 1, 2023 at 5.00% annually on the balance outstanding.
5. If the unit is not vacated on or before February 28, 2023, then starting March 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. 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 1, 2023.

February 13, 2023

Date Issued

Frank Ebner

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 of the Tenant expires on September 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 as the tenancy is terminated

Rent Owing To Hearing Date of January 26, 2023	\$12,231.13
Application Filing Fee	\$ 186.00
NSF Charges	\$ 0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$ 8,056.00
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	- \$ 615.00
Less the amount of the interest on the last month's rent deposit	- \$ 57.92
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	\$3,688.21
Plus daily compensation owing for each day of occupation starting January 27, 2023:	\$ 22.32 (per day)

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