



Order under Section 69 Residential Tenancies Act, 2006

Citation: Aiderbrook Management Inc. v Fountain, 2023 ONLTB 19222

Date: 2023-02-06

File Number: LTB-L-035911-22

In the matter of: 120, 2369 LAKE SHORE BLVD W ETOBICOKE
ON M8V1C2

Between: Aiderbrook Management Inc. Landlord

And

Trevor Fountain Tenant

Aiderbrook Management Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Trevor Fountain (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 Agent, A. Ali, and the Tenant attended the hearing. The Landlord's witness, M. Polcik (MP) was also present at the hearing.

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 lawful rent is \$1,705.00.
4. Based on the Monthly rent, the daily rent/compensation is \$56.05. This amount is calculated as follows: \$1,705.00 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 \$15,345.00.

7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. Following the Tenant's denial that he received the N4 notice of termination, the Landlord's witness, MP, joined the hearing and testified that he placed the document in the Tenant's mailbox in June 2022. The Tenant had no questions for MP and stated that he did not doubt MP's testimony. I am satisfied that the Tenant was served with the notice of termination.
9. The Tenant testified that he was formally employed by the Landlord who unlawfully terminated his employment in April 2022. The Tenant subsequently entered a tenancy agreement with the Landlord on May 1, 2022.
10. The Tenant further testified that he was employed for a short time following his termination but has largely been unemployed due to disabilities. The Tenant did not propose a plan to pay the outstanding arrears but expects to do so at future date when he files a wrongful termination lawsuit against the Landlord.
11. As stated at the hearing the issue of the alleged wrongful termination is separate from the Landlord's application. The Tenant from his demeanour at the hearing, has no intention of paying the rent or arrears and is quite prepared to continue to reside in the unit rent free.
12. The Landlord collected a rent deposit of \$1,705.00 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.
13. Interest on the rent deposit, in the amount of \$32.47 is owing to the Tenant for the period from May 1, 2022 to February 2, 2023.
14. I have considered all 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 2, 2023 pursuant to subsection 83(1)(b) of the Act. Additional time is given to the Tenant to secure alternative accommodation.

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:**
 - \$15,531.00 if the payment is made on or before February 28, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$17,236.00 if the payment is made on or before March 2, 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 2, 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 2, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$12,200.63. 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 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$56.05 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 17, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 18, 2023 at 5.00% annually on the balance outstanding.
8. If the unit is not vacated on or before March 2, 2023, then starting March 3, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. 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 3, 2023.

February 6, 2023

Date Issued

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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 September 3, 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 | \$15,345.00 |
| Application Filing Fee | \$186.00 |
| Total the Tenant must pay to continue the tenancy | \$15,531.00 |

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before March 2, 2023

| | |
|--|--------------------|
| Rent Owing To March 31, 2023 | \$17,050.00 |
| Application Filing Fee | \$186.00 |
| Total the Tenant must pay to continue the tenancy | \$17,236.00 |

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

| | |
|--|----------------------|
| Rent Owing To Hearing Date | \$13,752.10 |
| Application Filing Fee | \$186.00 |
| Less the amount of the last month's rent deposit | - \$1,705.00 |
| Less the amount of the interest on the last month's rent deposit | - \$32.47 |
| Total amount owing to the Landlord | \$12,200.63 |
| Plus daily compensation owing for each day of occupation starting February 3, 2023 | \$56.05 (per day) |