



Order under Section 78(6) Residential Tenancies Act, 2006

Citation: Espiritu v Johnson, 2023 ONLTB 18241

Date: 2023-02-03

File Number: LTB-L-076066-22

2023 ONLTB 18241 (CanLII)

In the matter of: 622 WALLACE ST
LONDON ON N5Y3R7

Between: Irene Espiritu Landlord

And

Kenneth Johnson Tenant

Irene Espiritu (the 'Landlord') applied for an order to terminate the tenancy and evict Kenneth Johnson (the 'Tenant') and for an order to have the Tenant pay the rent they owe because the Tenant did not meet a condition specified in the order issued by the LTB on October 13, 2022 with respect to application LTB-L-006521-22.

This L4 application ('application') was decided without a hearing being held.

Determinations:

1. The order provides that the Landlord can apply to the LTB under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') without notice to the Tenant to terminate the tenancy and evict the Tenant if the Tenant does not meet certain condition(s) in the order. This application was filed within 30 days of the breach.
2. I find that the Tenant has not met the following conditions specified in the order: **The Tenant failed to pay lawful monthly rent for October 2022 on or before October 1, 2022. Further, the Tenant failed to pay \$1,000.00 towards arrears on or before October 17, 2022.**
3. The previous application includes a request for an order for the payment of arrears of rent and the order requires the Tenant to make payments by specific due dates. Accordingly, in

addition to eviction, the Landlord is entitled to request an order for the payment of arrears owing.

4. The Landlord claims in this application that the amount the Tenant was required to pay as per the prior order is \$20,186.00. The previous order notes under the section titled **On consent it is ordered that** the total sum of the arrears owing up to and including August 31, 2022 is \$20,186.00 which includes the application filing fee of \$186.00. It further notes that for the purpose of settlement, the Landlords agree to waive the amount of \$8,000.00 in arrears resulting in a differential outstanding balance of \$12,186.00. The Landlord is entitled to claim \$12,186.00 as the amount owing from the prior order. The Landlord has waived their right to claim the original amount of the arrears of \$20,186.00 (including application filing fee). This is because as per the terms of the previous order, the Landlord entered into an agreement on consent which required the Tenant to pay \$12,186.00 towards the arrears and application filing fee. The Landlord cannot claim an amount for the prior arrears in excess of this amount through the process of filing the L4 application. The Landlord is entitled to request new arrears owed by the Tenant since the issuance of the previous order which the Landlord has requested in this application.
5. Therefore, the amount that is still owing from the prior order is \$12,186.00 and that amount is included in this order.
6. Since the date of the previous order, the Tenant has failed to pay the full rent that became owing for the period from September 1, 2022 to October 31, 2022.
7. The Landlord collected a rent deposit of \$4,000.00 from the Tenant and this deposit is still being held by the Landlord.
8. Interest on the rent deposit is owing to the Tenant for the period from May 29, 2021 to February 03, 2023.
9. The amount of the rent deposit and interest on the rent deposit is applied to the amount the Tenant is required to pay.
10. The Landlord is entitled to daily compensation from the day after this order is issued to the date the Tenant moves out of the unit at a daily rate of \$65.75. This amount is calculated as follows: \$2,000.00 x 12, divided by 365 days.

It is ordered that:

1. Order LTB-L-006521-22 is cancelled.
2. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before February 14, 2023.
3. If the unit is not vacated on or before February 14, 2023, then starting February 15, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

4. 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 15, 2023.
5. The Tenant shall pay to the Landlord \$18,325.93* (**Less any payments made by the Tenant after this application was filed on October 31, 2022**). This amount represents the rent owing up to February 03, 2023, application fee for the previous application, less the rent deposit and interest the Landlord owes on the rent deposit.
6. The Tenant shall also pay to the Landlord \$65.75 per day for compensation for the use of the unit starting February 4, 2023 to 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 14, 2023, the Tenant will start to owe interest. This will be a simple interest calculated from February 15, 2023 at 5.00% annually on the balance outstanding.

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February 3, 2023

Date Issued

Kimberly Parish
Member, Landlord and Tenant Board

15 Grosvenor

Street, Ground Floor,
Toronto ON M7A 2G6

The Tenant has until February 13, 2023 to file a motion with the LTB to set aside the order under s. 78(9) of the Act. If the tenant files the motion by February 13, 2023 the order will be stayed and the LTB will schedule a hearing.

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 15, 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.

* Refer to the attached Summary of Calculations.

Summary of Calculations

Amount the Tenant must pay the Landlord:

Reason for amount owing	Period	Amount
Amount owing from previous order	Up to August 31, 2022	\$12,186.00

New Arrears	September 1, 2022 to February 03, 2023	\$10,197.25
Less the rent deposit:		-\$4,000.00
Less the interest owing on the rent deposit	May 29, 2021 to February 03, 2023	-\$57.32
Plus daily compensation owing for each day of occupation starting February 04, 2023		\$65.75 (per day)
Total the Tenant must pay the Landlord:		\$18,325.93 +\$65.75 per day starting February 04, 2023

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