



Order under Section 69 Residential Tenancies Act, 2006

Citation: 2609559 Ontario Inc. v Haley, 2023 ONLTB 18105

Date: 2023-02-02

File Number: LTB-L-012078-22

In the matter of: 17, 386 WORTHINGTON ST W NORTH
BAY ON P1B3B6

Between: 2609559 Ontario Inc. Landlord

And

Dean Haley Tenant

2609559 Ontario Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Dean Haley (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes. **This is the L1 Application.**

The Landlord also applied for an order to terminate the tenancy and evict the Tenant because the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant. **This is the L2 Application.**

This application was heard by videoconference on January 11, 2023.

The Landlord's Agent, David Anselmo, attended the hearing. Sindi Mann attended the hearing as a witness for the Landlord.

As of 10:07 a.m., 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:

L1 Application

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 \$860.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$28.27. This amount is calculated as follows: \$860.00 x 12, divided by 365 days.
5. The Tenant has paid \$5,610.00 to the Landlord since the application was filed.
6. The rent arrears owing to January 31, 2023 are \$5,230.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.
9. The Landlord's Agent testified that he has not had any communication with the Tenant since August 2022 and it was at that time the Tenant informed him that until he has a job, he will not be paying the rent.
10. The Landlord's Agent also testified that he is unaware of any circumstances of the Tenant that would cause the termination of the tenancy to be delayed or denied. The Tenant did not attend the hearing to give evidence of their circumstances.
11. 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.

L2 Application

12. At the hearing, I raised a preliminary issue with the N5 notice of termination ('N5 Notice') given to the Tenant on February 1, 2022.
13. The N5 Notice filed with the Board indicates it is a *second* N5 Notice served upon the Tenant however the Landlord did not provide the Tenant with a *first* N5 Notice.
14. Section 64 of the Act sets out:

- (1) A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.
- (2) A notice of termination under subsection (1) shall,
 - (a) provide a termination date not earlier than the 20th day after the notice is given;
 - (b) set out the grounds for termination; and
 - (c) require the tenant, within seven days, to stop the conduct or activity or correct the omission set out in the notice.

15. Section 68 of the Act states:

- (1) A landlord may give a tenant notice of termination of the tenancy if,
 - (a) a notice of termination was given to the tenant under section 62, 64 or 67; and
 - (b) more than seven days but less than six months after the notice mentioned in clause (a) was given to the tenant, an activity takes place, conduct occurs or a situation arises that constitutes grounds for a notice of termination under section 60, 61, 62, 64 or 67, other than an activity, conduct or a situation that is described in subsection 61 (1) and that involves an illegal act, trade, business or occupation described in clause 61 (2) (a).

16. A valid first voidable N5 notice must have been served on the Tenant before the Landlord has a right to serve a non-voidable N5 notice under section 68. As a first N5 Notice was not given to the Tenant, the Board cannot consider the Landlord's second N5 notice served pursuant to section 68 of the Act.

17. The Landlord requested consent of the Board to withdraw their L2 application. In accordance with subsection 200(4) of the Act, I consent to the withdrawal of the application.

It is ordered that:

L1 Application

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:**
 - \$6,276.00 if the payment is made on or before February 13, 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 February 13, 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 February 13, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$4,866.97. 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 \$28.27 per day for the use of the unit starting January 12, 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 13, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 14, 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 February 13, 2023, then starting February 14, 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 February 14, 2023.

L2 Application

11. The Landlord's application is dismissed.

February 2, 2023

Date Issued

 Susan Priest
 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 August 14, 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.

*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

**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 13, 2023

Rent Owing To February 28, 2023	\$11,700.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$5,610.00
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	\$6,276.00

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

Rent Owing To Hearing Date	\$10,290.97
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Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$5,610.00
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	- \$
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	\$4,866.97
Plus daily compensation owing for each day of occupation starting January 12, 2023	\$28.27 (per day)