



Order under Section 69 Residential Tenancies Act, 2006

Citation: Syed v Wright, 2023 ONLTB 16339

Date: 2023-02-02

File Number: LTB-L-028428-22

In the matter of: 6 Quebec Street
Havelock ON K0L1Z0

Between: Omar Syed Landlord

And

Trevor Wright-Mooney Tenant

Omar Syed (the 'Landlord') applied for an order to terminate the tenancy and evict Trevor Wright (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 17, 2023.

The Landlord's Legal Representative Crystal Francey and the Tenant Trevor Wright-Mooney attended the hearing.

Determinations:

1. At the hearing, the Landlord's Legal Representative relied on oral submissions and referred to documents to support their application. The Tenant was also given an opportunity to provide submissions and evidence.
2. 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.
3. As of the hearing date, the Tenant was still in possession of the rental unit.
4. The lawful rent is \$800.00. It is due on the 1st day of each month.
5. Based on the monthly rent, the daily rent/compensation is \$26.30. This amount is calculated as follows: \$800.00 x 12, divided by 365 days.

6. The Tenant has not made any payments since the application was filed.
7. The rent arrears owing to January 31, 2023 are \$13,435.00. The Tenant did not dispute this amount.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord assumed the Tenant when they purchased the rental unit in July of 2021 and did not know if a rent deposit had been collected by the former Landlord. They were prepared to concede the Tenant's evidence that he paid a rent deposit of \$800.00 when he moved into a different rental unit at the property in 2010. His evidence was he believed the deposit remained with the former Landlord when he moved units at the property. I find on a balance of probabilities the Landlord is holding a rent deposit in the amount of \$800.00. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
10. The Landlord has not paid any interest on the rent deposit and I find it reasonable to calculate interest from December 31, 2010 as the Tenant paid the deposit in 2010 but did not say when it was paid. The interest owing on the rent deposit from December 31, 2010 until January 17, 2023 is \$154.65.

Section 83 Considerations

11. The Landlord submitted they made attempts to contact the Tenant in order to discuss the accumulating rent arrears. The Tenant acknowledged the Landlord did make attempts but that he was not happy some of the contact occurred at 9:30 p.m. to 10:00 p.m. at night. The Landlord also submitted they sent the Tenant letters but did not receive a response. The Landlord is seeking an eviction within eleven days of this order.
12. I asked the Tenant about his circumstances and he explained he has been unemployed for an extended period and has recently started working. I canvassed the Tenant's monthly income with him and it was clear the tenancy was no longer sustainable. The Tenant agreed he could not afford the monthly rent and a payment towards the rental arrears. I asked the Tenant if there were any circumstances he wanted me to be aware of that would make eviction unfair. He said there was not, and simply advised me he had put himself in the position he now finds himself in. I asked the Tenant how much time he would need to find different living arrangements and did not provide a time period. He stated he had been looking for months.
13. 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 February 28, 2023 pursuant to subsection 83(1)(b) of the Act. This will provide the Tenant some additional time to find new accommodations given his limited means at this time.

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:**
 - \$14,421.00 if the payment is made on or before February 28, 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 28, 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 28, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$12,313.45. 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 \$26.30 per day for the use of the unit starting January 18, 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 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.
8. 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.
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 1, 2023.

February 2, 2023

Date Issued

John Cashmore
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 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	\$14,235.00
Application Filing Fee	\$186.00
Total the Tenant must pay to continue the tenancy	\$14,421.00

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

Rent Owing To Hearing Date	\$13,082.10
Application Filing Fee	\$186.00
Less the amount of the last month's rent deposit	- \$800.00
Less the amount of the interest on the last month's rent deposit	- \$154.65
Total amount owing to the Landlord	\$12,313.45
Plus daily compensation owing for each day of occupation starting	\$26.30 (per day)