



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: Homestead Land Holdings Limited v De kufrin, 2023 ONLTB 16325

Date: 2023-01-23

File Number: LTB-L-026211-22

In the matter of: 1115, 195 CLEARVIEW AVE OTTAWA
ON K1Z6S1

Between: Homestead Land Holdings Limited Landlord

And

Draggan De kufrin Tenant

Homestead Land Holdings Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Draggan De kufrin (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 16, 2023.

The Landlord and the Tenant attended the hearing. The Landlord was represented by Meghan O'Connor.

I note the Tenant became a disruptive observer after the hearing concluded and demonstrated disrespect to the Board Member, the proceedings and its procedure. As a result, he was removed from the hearing room at 5:06pm. While costs against the Tenant for this inappropriate conduct are not being levied, the Tenant is warned to refrain from this conduct in any Board proceeding going forward.

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 \$948.08. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$31.17. This amount is calculated as follows: \$948.08 x 12, divided by 365 days.
5. The Tenant has paid \$5,484.00 to the Landlord since the application was filed.
6. The rent arrears owing to January 31, 2023 are \$3,821.60.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord seeks a standard, voidable, eleven-day order.

Tenant's Response

9. The Tenant disputes the arrears as claimed by the Landlord as the Tenant submits the Landlord has provided different numbers from when the N4 was served to the hearing date. The Tenant is aware that he is three months late in rent and had an issue in December 2022.
10. The Tenant testified that the reason he fell into arrears was because his employment insurance payments began late. Between then and the hearing date, he has paid two months of arrears.
11. The Tenant seeks to preserve his tenancy but indicates that he will not pay the arrears.
12. No further submissions were provided by the Tenant with respect to circumstances I must consider in whether to delay or deny eviction.

ANALYSIS

13. Based on the evidence before the Board, I find the arrears and costs owing to January 31, 2023 total \$4,007.60. I say this because while the Tenant disputes the quantum of arrears, the Tenant was unable to provide evidence of what payments the Landlord was missing or demonstrate the discrepancy between the Landlord and his numbers.
14. While the Tenant says he did not know of the Landlord's claim in terms of when the arrears accrued, I find that the N4 notice of termination outlined arrears from January and February 2022, the L1 included arrears to May 2022. These documents were served to the Tenant by the Board mid-December 2022 with the notice of hearing. So, I find the Tenant was well-aware of the allegation of rent arrears and the period in which they accrued at least a month before the hearing date and could have gathered evidence of discrepancies in advance of the hearing.

15. Without positive evidence, it is very difficult to establish a negative claim. Thus, in order for the Tenant's claim to be successful, he must provide some positive proof of the disputed payment, which, I find, he did not.
16. At paragraph 26 of *F. H. v. McDougall, 2008 SCC 53 (CanLII)*, the Court found that the civil standard of proof requires that evidence "must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test." Here I find the Tenant has failed to meet the required standard.
17. Further, if what the Tenant is saying is true with respect to being late on four month's rent, the numbers are in close proximity with the Landlord's claim for arrears.
18. With respect to the Tenant's request for relief, since the Tenant is unwilling to pay the rent arrears, I find the circumstances do not warrant granting a repayment plan. I say this because repayment plans are granted to allow a tenant to catch up on the arrears while continuing to pay their monthly rent. Here, the Tenant has bluntly indicated he would not be paying the arrears nor has he offered a repayment plan.
19. Since the Tenant has not provided submissions regarding any circumstances the Board should consider as to whether or not I should delay or deny terminating the tenancy, I will grant the order as requested by the Landlord.
20. The Landlord collected a rent deposit of \$926.79 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 \$22.22 is owing to the Tenant for the period from February 1, 2022 to January 16, 2023.
22. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
23. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

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:**

- \$4,007.60 if the payment is made on or before January 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$4,955.68 if the payment is made on or before February 3, 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 3, 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 3, 2023**
 5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$2,609.23. 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 \$31.17 per day for the use of the unit starting January 17, 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 3, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 4, 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 3, 2023, then starting February 4, 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 4, 2023.

January 23, 2023
Date Issued

Sonia Anwar-Ali
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 4, 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 January 31, 2023

Rent Owing To January 31, 2023	\$9,305.60
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$5,484.00
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	\$4,007.60

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before February 3, 2023

Rent Owing To February 28, 2023	\$10,253.68
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$5,484.00
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	\$4,955.68

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

Rent Owing To Hearing Date	\$8,856.24
Application Filing Fee	\$186.00

NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$5,484.00
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	- \$926.79
Less the amount of the interest on the last month's rent deposit	- \$22.22
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	\$2,609.23
Plus daily compensation owing for each day of occupation starting January 17, 2023	\$31.17 (per day)