



Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

Citation: Eghtesadi v Dryfhout, 2023 ONLTB 15941

Date: 2023-01-19

File Number: LTB-L-077798-22-RV

In the matter of: Basement, 256 Stone Road
Aurora Ontario L4G6Y7

Between: Farnaz Eghtesadi Landlords
Mohammad Bagher Alizadeh

And

Christopher Dryfhout Tenants
Kellie Marie Paul

Review Order

Farnaz Eghtesadi and Mohammad Bagher Alizadeh (the 'Landlords') applied for an order to terminate the tenancy and evict Christopher Dryfhout and Kellie Marie Paul (the 'Tenants') because:

- the Tenants has been persistently late in paying the Tenants' rent.

The Landlords also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was resolved by order LTB-L-077798-22 issued on November 8, 2021.

On July 13, 2022, the Landlord requested a review of the order.

On December 13, 2022 interim order LTB-L-077798-22-RV-IN was issued, staying the order issued on November 8, 2021.

This application was heard by videoconference on January 16, 2023. Only the Landlords' legal representative, B. Lockwood, attended the hearing. As of 9:37 a.m., the Tenants were 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:

Request to Review

1. On August 12, 2021, the Landlords' application was scheduled to be heard. The Landlords did not attend in support of their application and as a result, it was dismissed as abandoned.

2. The Landlords submitted that they did not attend because it was presumed it had been resolved with the L1 application, TNL-32166-21. On July 30, 2021, the Landlords and Tenants attended a hearing for the L1 and reached a resolution for both applications. The matter was reconvened several times. On the last reconvene date, the hearing member discontinued the L1 application and declined to hear this application.
3. I find that there was a serious error in procedure. The uncontested evidence before me is that the parties agreed to resolve this application with the L1 application. The application was mistakenly dismissed as abandoned although it was resolved with the L1. On this basis, I find that there was a serious error, and the application was heard afresh.

De Novo

4. As explained below, the Landlords has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated.
5. The Tenants were in possession of the rental unit on the date the application was filed.

N8 Notice of Termination

6. On March 25, 2021, the Landlords gave the Tenants an N8 notice of termination.

Persistently Late

7. The Tenants have persistently failed to pay the rent on the date it was due. The rent is due on the first day of each month. As per the N8 notice of termination, the rent has been paid late 12 times in 19 months.

Relief from Eviction

8. I have considered all of the disclosed circumstances in accordance with subsection 83 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.
9. The Landlords submitted that the Tenants had paid their rent late an additional eight times since they entered their agreement in 2021. The Tenants were not present to disclose any circumstances for me to consider delaying or denying eviction. Further, the Landlords were not aware of any of the Tenants' circumstances for me to consider delaying or denying eviction. Based on the foregoing, I find it would be unfair to grant relief from eviction.

It is ordered that:

1. The request to review order LTB-L-077798-22 issued on November 8, 2021 is granted. The order is cancelled and replaced with the following:
2. The tenancy between the Landlords and the Tenants is terminated, as of January 30, 2023. The Tenants must move out of the rental unit on or before January 30, 2023.

3. The Tenants shall also pay to the Landlord \$201.00 for the cost of filing the application.
4. If the Tenants do not pay the Landlord the full amount owing on or before January 30, 2023, the Tenants will start to owe interest. This will be simple interest calculated from January 31, 2023 at 5.00% annually on the balance outstanding.
5. If the unit is not vacated on or before January 30, 2023, then starting January 31, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. 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 January 31, 2023.

January 19, 2023

Date Issued

Camille Tancioco

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 July 31, 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.