



Order under Section 69 Residential Tenancies Act, 2006

Citation: 1000022453 Ontario Inc c/o Triovest Realty Advisors Inc v Seters, 2023 ONLTB 14244

Date: 2023-01-12

File Number: LTB-L-024208-22

In the matter of: 207, 20 COSBURN AVE
TORONTO ON M4K2E7

Between: 1000022453 Ontario Inc c/o Triovest Realty Advisors Inc Landlord

And

Mark Van Seters Tenant

1000022453 Ontario Inc c/o Triovest Realty Advisors Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Mark Van Seters (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 4, 2023 at 09:00 am.

The Landlord Representative Martin Zarnett and the Tenant attended the hearing.

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. The lawful rent is \$1,220.63. It is due on the 1st day of each month.
3. Based on the Monthly rent, the daily rent/compensation is \$40.13. This amount is calculated as follows: $\$1,220.63 \times 12$, divided by 365 days.
4. The Tenant has not made any payments since the application was filed.
5. The rent arrears owing to January 31, 2023 are \$13,449.91.
6. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
7. The Landlord collected a rent deposit of \$1,205.81 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.
8. Interest on the rent deposit, in the amount of \$14.80 is owing to the Tenant for the period from January 1, 2022 to January 4, 2023.

9. At the time of the hearing the Tenant disputed the amount owing and testified that on or about May 12, 2022 the Landlord changed the locks to the rental unit. He said that he ceased to reside at the rental unit and as such should not owe any rent following the date of the lock out .
10. Nonetheless, on cross-examination, the Tenant testified that following the Landlord changing the locks, the Landlord provided him with a key and he still had access to rental unit and complex. In other words, there was no lock out, merely a changing of keys. The Tenant further testified that he never gave notice, and when presented with photographic evidence, confirmed that as late as October 2022 his possession where still in the apartment.
11. The Landlord representative then submitted, based on the testimony enlisted on cross-examination, that it was reasonable for the Landlord to assume that the Tenant had not vacated and therefore still retained possession and an obligation to pay rent.
12. Based on the above testimony I am satisfied on that as of the hearing date, the Tenant was still in possession of the rental unit.
13. 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. Specifically given the tenant testified that they were no longer living at the rental unit, in spite of still having possession and the ability to reside there, I am satisfied that the Tenant would not be prejudiced by granting the Landlord's request to evict.

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:**
 - \$13,635.91 if the payment is made on or before January 23, 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 January 23, 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 January 23, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$11,331.79. 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 \$40.13 per day for the use of the unit starting January 5, 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 January 23, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 24, 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 January 23, 2023, then starting January 24, 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 January 24, 2023.

January 12, 2023
Date Issued

Kelly Delaney
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 24, 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 January 23, 2023

Rent Owing To January 31, 2023	\$13,449.91
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	\$13,365.91

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

Rent Owing To Hearing Date	\$12,366.40
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	- \$1,205.81
Less the amount of the interest on the last month's rent deposit	- \$14.80
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	\$11,331.79
Plus daily compensation owing for each day of occupation starting January 5, 2023	\$40.13 (per day)

