



Order under Section 69 Residential Tenancies Act, 2006

Citation: Minarik v Ross, 2023 ONLTB 14872

Date: 2023-01-11

File Number: LTB-L-024984-22

In the matter of: 152 BURLINGTON ST E
HAMILTON ON L8L4G9

Between: Brent Minarik Landlords
Michael Minarik

And

Roy Ross Tenant

Brent Minarik and Michael Minarik (the 'Landlords') applied for an order to terminate the tenancy and evict Brice (Bryce) Ross, Emma Ross and Roy Ross (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on January 5, 2023. The Landlord Brent Minarik, the Landlord's legal representative Han Hao and the Landlord's witness Paul Searle attended the hearing. The Tenant Roy Ross attended the hearing and was self-represented.

Determinations:

Named parties:

1. The Landlord consented to amend the application to remove Brice Ross and Emma Ross as Tenants and/or respondents.

Service of N4 notice:

2. The Tenant argued that he was not served with an N4 notice of termination for the nonpayment of rent.

3. Paul Searle provided oral testimony at the hearing and testified that he served the Tenant with the N4 notice on April 7, 2022 by delivering the notice in a sealed envelope and into the Tenants personal mailbox located at the front of the house.
4. On cross-examination Mr. Searle stated that he could not recall if he printed a name or address on the envelope but confirms that the envelope and notice of termination was placed inside the Tenant's personal mailbox.
5. In my view, I find that the Tenant was lawfully served with a N4 notice of termination by the Landlords agent. I find the testimony of Mr. Searle to be credible and consistent with the certificate of service filed with the Board.
6. The Tenant argues that the notice was not lawfully served because the envelope did not address the Tenant's name or rental unit. In my view, this is a moot point. The N4 notice was personally served by delivering the notice into the Tenant's personal mailbox. Section 191(1) (d) of the *Residential Tenancies Act, 2006* (the Act) confirms that a notice is sufficiently served by "leaving it in the mailbox where mail is ordinarily delivered to the person". When using personal service as the Landlord did here, there is no requirement that the notice be placed in an envelope and addressed specifically to the Tenant of the rental unit. I find that this would only be a determining factor if the notice was served via Canada Post, in which a name and address would be required for sufficient service. In this case, I find that the service was in accordance with the Act and that the notice was lawfully served to the Tenant and the rental unit.
7. I further note that the Tenant's own testimony suggests that the Tenant may have inadvertently disposed of the notice of termination because he deemed it to be "junk mail". At approximately 2:23:10 of the hearing recording, the Tenant confirms that if he receives an envelope with no name addressed to it that he deems it to be junk mail and as such disposes of it.

Arrears of rent:

8. 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.
9. As of the hearing date, the Tenant was still in possession of the rental unit.
10. The lawful rent is \$1,900.00. It is due on the 1st day of each month.
11. Based on the Monthly rent, the daily rent/compensation is \$62.47. This amount is calculated as follows: \$1,900.00 x 12, divided by 365 days.

12. The Tenant has not made any payments since the application was filed.
13. The rent arrears owing to January 31, 2023 are \$22,800.00.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. The Landlord collected a rent deposit of \$1,900.00 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.
16. Interest on the rent deposit, in the amount of \$59.24 is owing to the Tenant for the period from April 1, 2021 to January 5, 2023.

Relief from eviction:

17. 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.
18. At the hearing the Tenant did not propose a repayment plan and testified that he has been actively searching for a new rental unit since February 2022.
19. The testimony before the Board also indicates that on or about January 2022 the Landlords served the Tenant with a N12 notice of termination. This application has been filed with the Board and is pending a hearing (LTB-L-002488-21).
20. In my view, it is clear that since being served with a N12 notice by the Landlords, that the Tenant has proceeded to withhold their rent. There was no evidence to suggest that the Tenant has experienced unforeseen circumstances or that their current monthly income had changed since February 2022. As such, I find that the Tenant has deliberately withheld their rent payments in retaliation to the Landlords serving him with an N12 notice of termination.
21. I find that it would be unfair to grant relief from eviction. In this case, the Tenant has made no payments to the Landlords in over one-year and has not demonstrated an unforeseen circumstance which would have resulted in the non-payment. As such, I am not satisfied that any relief from eviction is warranted.

It is ordered that:

1. The tenancy between the Landlords 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 Landlords or to the LTB in trust:**
 - \$22,986.00 if the payment is made on or before January 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 January 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 January 28, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$19,439.11. 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 Landlords owe 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 Landlords compensation of \$62.47 per day for the use of the unit starting January 6, 2023 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlords the full amount owing on or before January 28, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 29, 2023 at 5.00% annually on the balance outstanding.
8. If the unit is not vacated on or before January 28, 2023, then starting January 29, 2023, the Landlords 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 Landlords on or after January 29, 2023.

January 17, 2023

Date Issued

Fabio Quattrociochi
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 29, 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 28, 2023

Rent Owing To January 31, 2023	\$22,800.00
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	\$22,986.00

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

Rent Owing To Hearing Date	\$21,212.35
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	- \$1,900.00
Less the amount of the interest on the last month's rent deposit	- \$59.24
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	\$19,439.11
Plus daily compensation owing for each day of occupation starting January 6, 2023	\$62.47 (per day)