



Order under Section 78(6) Residential Tenancies Act, 2006

Citation: Kempenaar v McWilliam, 2023 ONLTB 14779

Date: 2023-01-11

File Number: LTB-L-070496-22

In the matter of: A, 75A GEORGE STREET SOUTH
BELLEVILLE ONTARIO K8N3G8

Between: 1011616 Ontario Inc. Landlord
and Peter Kempenaar/David Brown

And

Renee McWilliam Tenant

1011616 Ontario Inc. and Peter Kempenaar/David Brown (the 'Landlord') applied for an order to terminate the tenancy and evict Renee McWilliam (the 'Tenant') because the Tenant did not meet a condition specified in the order issued by the LTB on December 8, 2021 with respect to application TEL-15937-21.

This matter was directed to hearing to clarify the name(s) of the Landlord. This application was heard by videoconference January 5, 2023.

Peter Kempenaar, for the Landlord, and the Tenant attended the hearing.

Determinations:

1. The Landlord is as listed above. The previous order only listed David Brown as the Landlord, this was incorrect.
2. The order provides that the Landlord can apply to the LTB under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') without notice to the Tenant to terminate the tenancy and evict the Tenant if the Tenant does not meet certain condition(s) in the order. This application was filed within 30 days of the breach.
3. After going through the payments recorded on the L4 application, the Tenant agreed the previous order was breached 6 times: the Tenant did not make the required arrears payments on the 8th of September, October, and December 2022 or the rent in full by 14th of September, November and December 2022.
4. The Tenant testified that she is seeking relief from eviction; she hopes to be given the chance to preserve the tenancy by paying all arrears owing by January 31, 2023. If she is allowed to do this, she will continue looking for a new place and would give the Landlord

proper notice to vacate when she finds one. If eviction is granted, then she needs at least a month to vacate but would likely not be able to find a place to live in that time. She is a single mother of two, and ran into problems due to her work situation and having to pay for required medications out of pocket; she is now in a better situation work-wise, and her medication is now covered.

5. The Landlord submitted the outstanding arrears to date, including the \$200.00 payment made the morning of the hearing is \$1,400.00 plus the rent is still outstanding for November and December; the total amount owing is \$3,000.00.
6. The Landlord testified that he is still seeking termination because he has lost faith in the Landlord-Tenant relationship; the Tenant admits to having breached the order more than once.
7. Based on the evidence and testimony before me, as of the filing of the L4 application on October 7, 2022, I find that the Tenant has not met the following conditions specified in the order:
 - i) Pay \$400.00 towards the arrears on September and October 8, 2022;
 - ii) Pay the rent, \$800.00, on or before September 14, 2022.
8. I further find that since the filing of the L4 application, the Tenant has further breached the conditions by not paying the arrears due December 8, 2022 or the rent due November and December 14, 2022.
9. The previous application includes a request for an order for the payment of arrears of rent and the order requires the Tenant to make payments by specific due dates. Accordingly, in addition to eviction, the Landlord is entitled to request an order for the payment of arrears owing.
10. The Tenant was required to pay \$4,900.00 for rent arrears and the application filing fee in the previous order. The amount that is still owing from that order is \$1,400.00 and that amount is included in this order. This order replaces order TEL-15937-21.
11. Since the date of the previous order, the Tenant has failed to pay the full rent that became owing for the period from November 1, 2022 to December 1, 2022; pursuant to the previous order, these rents were due by the 14 of each respective month.
12. The Landlord collected a rent deposit of \$800.00 from the Tenant and this deposit is still being held by the Landlord.
13. Interest on the rent deposit is owing to the Tenant for the period from September 30, 2019.
14. The last month rent deposit and any applicable interest must be applied to the last month of the tenancy.
15. The Landlord is entitled to daily compensation from the day after this termination date if the Tenant does not vacate the rental unit to the date the Tenant moves out of the unit at a daily rate of \$26.30. This amount is calculated as follows: \$800.00 x 12, divided by 365 days.

Relief from Eviction

16. 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 grant relief from eviction pursuant to subsection 83(1) of the Act. I accept the Tenant's testimony that she is now in a position to clear the arrears and pay the Landlord properly for upcoming rent, therefore there would be no prejudice to the Landlord. Further, if the Tenant does not clear the arrears by January 31, 2023, then the Landlord is receiving the requested termination.
17. It should be noted that this order does not take into account any outstanding utilities as this application was for arrears of rent only.
18. It should also be noted that the amounts owing in this order is based on the Landlord's documentation. If the Tenant provides the Landlord with evidence that other payments were made that are not included in this application, this amount shall be deducted from what is owing.
19. This order contains all the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. Order TEL-15937-21 is cancelled.
2. Unless the Tenant voids the order as set out below, the tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before January 31, 2022.
3. The Tenant shall pay to the Landlord \$2,967.80*, which represents the amount of rent owing and compensation up to December 7, 2021, less the rent deposit and interest the Landlord owes on the rent deposit.
4. If the Tenant does not pay the Landlord the full amount owing* on or before January 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated February 1, 2023, at 5.00% annually on the balance outstanding.
5. If the unit is not vacated on or before January 31, 2023, then starting February 1, 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 February 1, 2023.
7. **If, on or before January 31, 2023, the Tenant pays the amount of \$3,800.00 ** to the Landlord, this order for eviction will be void.** This means that the tenancy would not be terminated, and the Tenant could remain in the unit. If this payment is not made in full and on time, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

8. The Tenant may make a motion to the Board under subsection 74(11) of the Act to set aside this order if they pay the amount required under that subsection on or after January 31, 2023, but before the Sheriff gives vacant possession to the Landlord. The Tenant is only entitled to make this motion once during the period of the tenancy agreement with the Landlord.
9. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before January 22, 2023.
10. If the unit is not vacated on or before January 22, 2023, then starting January 23, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
11. 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 23, 2023.
12. The Tenant shall pay to the Landlord \$4,863.00*. This amount represents the rent owing up to January 11, 2023, less the rent deposit and interest the Landlord owes on the rent deposit.
13. If the arrears are not paid in full by January 31, 2023, and the Tenant has not vacated the rental unit on or before this date, the Tenant shall pay to the Landlord \$26.30 per day for compensation for the use of the unit starting February 1, 2023 until the date the Landlord is given vacant possession.

January 11, 2023
Date Issued

Diane Wade
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,
Toronto ON M7A 2G6

The Tenant has until January 21, 2023 to file a motion with the LTB to set aside the order under s. 78(9) of the Act. If the tenant files the motion by January 21, 2023 the order will be stayed and the LTB will schedule a hearing.

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 01, 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.

* Refer to the attached Summary of Calculations.

** Refer to the attached Summary of Calculations.

Summary of Calculations

A.

Amount the Tenant must pay the Landlord if tenancy is terminated:*

Reason for amount owing	Period	Amount
Amount owing from previous order	Up to the hearing date, January 5, 2023	\$1,400.00
Amount of compensation for damages owing from previous order		\$0.00
New Arrears (rent for November 2022 through January 2023)	November 1, 2022 to January 31, 2023	\$2,400.00
New NSF cheque charges and related administration charges		\$0.00
Less the rent deposit:		-\$800.00
Less the interest owing on the rent deposit	October 1, 2019 to January 31, 2023	-\$32.20
Total the Tenant must pay the Landlord:		\$2,967.80

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Summary of Calculations cont'd**B.****Amount the Tenant must pay to void the eviction order and continue the tenancy:******If pay by January 31, 2023**

Reasons for amount owing	Period	Amount
Arrears:		\$1,400.00
Additional costs the Tenant must pay to the Landlord:		\$0.00
Plus rent due November 1, 2022 through January 31, 2023		+ \$2,400.00
Total the Tenant must pay to continue the tenancy:	On or before January 31, 2023	\$3,800.00