



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

Citation: Amiraco Properties Inc. v Suominen, 2023 ONLTB 14344

Date: 2023-01-11

File Number: LTB-L-020336-22-RV

In the matter of: 310, 9055 WYANDOTTE ST E
WINDSOR ON N8S1V6

Between: Amiraco Properties Inc. Landlord

And

Derek Suominen Tenant

Review Order

Amiraco Properties Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Derek Suominen (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-020336-22 issued on November 16, 2022.

On December 7, 2022, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

On December 9, 2022, interim order LTB-L-020336-22-RV-IN was issued, staying the order issued on November 16, 2022.

This application was heard by videoconference on January 4, 2023. The Landlord's legal representative, J. Lapkowski, and the Tenant attended the hearing.

Determinations:

Request to Review

1. The hearing of this application was scheduled for October 25, 2022. The Tenant did not attend the hearing. The application proceeded with only the Landlord's evidence.
2. At the review hearing, the Tenant stated that he called into the hearing room at 1:00 p.m. He tried to connect to the hearing block for over an hour. When he was unsuccessful, he called the Landlord's resident manager and the legal representative. He also contacted the Board the following day to advise that he missed the hearing. He also sought legal advice.
3. The Landlord objected to the Tenant's request to review. The Landlord submitted that on the day of the hearing, the Tenant advised the resident manager that he may not need to

attend. The Tenant denied having said this. Further, the Landlord's legal representative stated she did not receive any missed calls or voicemails from the Tenant.

4. I find that the Tenant was not reasonably able to participate because he was unable to call into the hearing room. The believable and credible evidence is that the Tenant had tried to call in to the hearing room, and when he was unsuccessful, tried to contact the Landlord's resident manager to determine next steps. I do not find that he told the resident manager that he may not need to attend the hearing, as I prefer his *viva voce* testimony over the Landlord's hearsay evidence. Further, the Tenant's believable evidence was that he contacted the Board and sought legal advice after he missed the hearing. In my view, the Tenant would have participated had there not been technical issues.
5. On this basis, I am satisfied that the Tenant did not have a reasonable opportunity to participate in the proceedings. As a result, the order is cancelled, and the Landlord's application was heard afresh.

De Novo

6. 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.
7. As of the hearing date, the Tenant was still in possession of the rental unit.
8. The lawful rent is \$947.10. It is due on the 1st day of each month.
9. Based on the Monthly rent, the daily rent/compensation is \$31.14. This amount is calculated as follows: \$947.10 x 12, divided by 365 days.
10. The Tenant has paid \$3,000.00 to the Landlord since the application was filed.
11. The rent arrears owing to January 31, 2023 are \$8,435.10.
12. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
13. The Landlord collected a rent deposit of \$950.29 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.
14. Interest on the rent deposit, in the amount of \$11.66 is owing to the Tenant for the period from January 1, 2022 to January 4, 2023.

Relief from Eviction

15. 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 not be unfair to postpone the eviction until February 28, 2023 pursuant to subsection 83(1)(b) of the Act.

16. Pursuant to subsection 83(6), the parties agreed that the Landlord attempted to negotiate a repayment agreement with the Tenant.
17. With respect to subsection 83(2), the Tenant's position is that the tenancy could continue. He presented a payment plan wherein he would pay the Landlord \$2,500.00 immediately and \$300.00 per month until the arrears are paid in full. He testified to his income and expenses. The Tenant stated he has no one to rely on and he has resided in the unit for 7-8 years.
18. The Landlord submitted that the tenancy cannot continue. The last time the Tenant made any payments to the Landlord was in May of 2022.
19. I find it would not be unfair to postpone termination of the tenancy. The information provided at the hearing regarding his income and circumstances establishes that the Tenant may be able to afford rent for the unit. However, it would be unfair to impose the proposed payment plan on the Landlord as it would take approximately 20 months for the arrears to be paid in full. However, in consideration of the length of tenancy, relief should be granted. This postponed termination will give the Tenant some time to organize his move or try to obtain a loan for funds needed to void the order.

It is ordered that:

1. Order LTB-L-020336-22 issued on November 16, 2022 is cancelled and replaced with the following:
2. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
3. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - **\$8,531.10** if the payment is made on or before January 31, 2023. See Schedule 1 for the calculation of the amount owing.
- OR**
- **\$9,568.20** if the payment is made on or before February 28, 2023. See Schedule 1 for the calculation of the amount owing.
4. 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 28, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
5. **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 28, 2023**
6. If the Tenant does not void the order, the Tenant shall pay to the Landlord **\$6,836.61**. 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.

7. The Tenant shall also pay the Landlord compensation of \$31.14 per day for the use of the unit starting January 5, 2023 until the date the Tenant moves out of the unit.
8. If the Tenant does not pay the Landlord the full amount owing on or before January 22, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 23, 2023 at 5.00% annually on the balance outstanding.
9. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
10. If the unit is not vacated on or before February 28, 2023, then starting March 1, 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 March 1, 2023.

January 11, 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 September 1, 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	\$11,435.10
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,000.00
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	\$8,531.10

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before February 28, 2023

Rent Owing To February 28, 2023	\$12,382.20
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,000.00
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	\$9,568.20

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

Rent Owing To Hearing Date	\$10,612.56
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,000.00
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	- \$950.29
Less the amount of the interest on the last month's rent deposit	- \$11.66
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	\$6,836.61
Plus daily compensation owing for each day of occupation starting January 5, 2023	\$31.14 (per day)